PP v. TENGKU ADNAN TENGKU MANSOR

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED ZAINI MAZLAN J
[CRIMINAL TRIAL NO: WA-45-1-01-2019]
21 DECEMBER 2020

CRIMINAL LAW: *Penal Code – Section 165 – Public servant obtaining valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant – Minister accepted RM2 million for himself without consideration, from company that he knew had dealings with him while carrying out his official duties – Allegation that money received was political donation – Whether elements of offence and charge established – Whether prosecution established prima facie case against accused – Whether defence raised doubts on prosecution's case*

CRIMINAL LAW: *Proceedings – In camera proceedings – Application for – Minister charged for accepting RM2 million for himself without consideration, from company that he knew had dealings with him while carrying out his official duties – Offence under s. 165 of Penal Code – Declaration of assets in proceedings – Fear for safety – Whether declarations fell under category of secret or confidential information – Whether court ought to exercise discretion to allow application for in camera proceedings – Courts of Judicature Act 1964, s. 15(1)*

The accused was charged under s. 165 of the Penal Code ('PC') for the offence of accepting RM2 million for himself, without consideration, from a company that he knew had dealings with him in his official duties. The prosecution's case revealed that: (i) in 2013, the accused was the Minister of Federal Territories and, at the same time, the Secretary General of the United Malays National Organisation ('UMNO'); (ii) when the Ministry of Federal Territories launched an affordable housing project ('project') to be built on the land belonging to Dewan Bandaraya Kuala Lumpur ('DBKL'), the accused had asked Tan Sri Chai, the Director of Aset Kayamas Sdn Bhd, a housing developer, to participate in the project; (iii) Aset Kayamas and DBKL then entered into a sale and purchase agreement; (iv) the accused had, some time during the course of the project, asked Tan Sri Chai for political donations for two upcoming by-elections; (v) Tan Sri Chai issued a cheque of RM2 million in the name of Tadmansori Holdings Sdn Bhd ('Tadmansori'), a company where the accused owned the lion's share; and (vi) Tan Sri Chai handed the cheque to the accused personally and the accused's driver then banked in the same to Tadmansori's bank account. At the end of the prosecution's case, the trial judge found (i) the accused was paid by the Government of Malaysia to perform public duties in his capacity as the Minister of the Federal Territories and was, therefore, a public servant; (ii) the accused received RM2 million for himself when such amount was credited into Tadmansori's bank accounts through Aset Kayamas' cheque. That was the end of the money trail and there was no payment made

A to UMNO from Tadmansori; (iii) there was no consideration for the monies received; and (iv) the accused knew that Tan Sri Chai had connections with his official function as the Minister for the Federal Territories. Satisfied that the prosecution had established a *prima facie* case, the accused was called to enter his defence. In his defence, the accused submitted that, *inter alia*, (i) as
B part of his responsibility as UMNO's Treasurer, he had solicited Tan Sri Chai for donations to finance the by-elections, and thought nothing of it as Tan Sri Chai had been making donations to UMNO and Barisan Nasional. To support his contention that the donations were for the by-elections, copies of the budget for the expenses were produced through Datuk Rizalman and
C Datuk Zakaria, who were both involved in the by-elections; (ii) the RM2 million was for UMNO's benefit and he requested for Tan Sri Chai to issue the cheque in Tadmansori's name as he would be using his funds first and later be reimbursed by UMNO; and (iii) he had no knowledge why there were no duplicate copies of the UMNO receipt in the receipt book concerned. The accused further added that he was already a successful
D businessman before joining the Cabinet and, according to him, RM2 million was mere 'pocket change'. He was ready to declare his assets ('declarations') to prove his wealth but requested that the proceedings be conducted *in camera*, pursuant to s. 15(1) of the Courts of Judicature Act 1964 ('CJA'), as he feared for his safety and that of his family.

E **Held (convicting accused as per charge and sentencing him to 12 months imprisonment and fine of RM2 million and, in default, six months' imprisonment):**

(1) To establish the offence of s. 165 of the PC, the prosecution must prove
F that: (i) the accused was a public servant; (ii) he had accepted or obtained for himself a valuable thing; (iii) he gave no consideration for the valuable thing or gave a consideration that he knew to be inadequate; and (iv) he knew that the person from whom he accepted the valuable thing had connections, or likely to be concerned in any proceedings or
G business transacted with his official functions as a public servant or of any public servant that he was subordinate to, or from a person known to the accused to be interested in, or related to the person concerned. The prosecution had successfully proven all the elements under s. 165 of the PC. (paras 63 & 123)

H **(2)** As a general rule, court proceedings are open to the public and the public has access to it to observe proceedings. *In camera* proceedings, on the other hand, are conducted in the presence of the judge, counsel and only the necessary parties involved in the litigation *sans* the public. The accused was a former Minister and the case had garnered public interest.
I Granting the accused's application would be contrary to the interests of justice. The public has a right to hear what the court hears and see what the court sees in order to appreciate any decision reached by the court and not be kept guessing or speculating due to any evidence being kept

out of public knowledge. The proceedings must be done transparently. Furthermore, the declarations did not come under any known category of secret or confidential information. The accused failed to convince the court that it would be expedient, in the interests of justice, or show any sufficient reason to seek the proceedings in respect of the declarations be held *in camera*. (paras 150, 151, 158, 161 & 162)

(3) The accused claimed that he had asked Tan Sri Chai to issue the cheque in Tadmansori's name as he would be using his funds first and UMNO would reimburse him for any advances that he makes on its behalf. However, there was no evidence to suggest that what the accused did was the norm and an accepted procedure in UMNO. There was also no corresponding payment from Tadmansori to UMNO and this led to the conclusion that the accused had received the RM2 million for himself. In addition to that, the by-elections were held in 2016 and the accused was not UMNO's Treasurer then; he only became the treasurer in 2018. Furthermore, the by-elections were clearly in two other States, namely Selangor and Perak. The accused's contention that he bore the responsibility to raise funds for the two by-elections could not be true. It would have been the responsibility of the respective States' Chairman and not the accused. (paras 172, 174 & 177-179)

(4) The UMNO receipt was crisp and new, considering that it was issued some four years ago in June 2016 and subsequently kept in Tan Sri Chai's wallet. The receipt was also signed by the accused. The fact that the only duplicate copy missing in the receipt book was that of the UMNO receipt raised a red flag. Even more alarming was the fact that the date of the UMNO receipt was not in sequence to the receipts issued before and after it. Another alarming factor was the fact that the receipt was issued by UMNO to Aset Kayamas. Since the cheque was made out to Tadmansori, the receipt for the RM2 million should have been issued by Tadmansori then. It made no sense for UMNO to issue the receipt when the cheque was not banked into its account. The UMNO receipt was treated with absolute suspicion and no weight was attached to it. (paras 92, 94 & 95)

(5) The simple one-page budget sheet prepared by Datuk Rizalman was based on his recollection and done for the trial. It was astonishing that he could remember the exact details of the expenditure that occurred four years ago particularly when he admitted having disposed of all the receipts related to the alleged expenditures incurred. The alleged budget sheet was hastily made up. The budget sheet prepared by Datuk Zakaria was equally doubtful as he admitted that it was merely an estimate of the proposed expenditure. It was also remarkable that he had disposed of all the receipts on the alleged expenses but kept the budget sheet. These budget sheets were tailored after the by-elections. (paras 180, 181 & 185)

(6) The prosecution had proven its case beyond reasonable doubt against the accused in respect of the charge under s. 165 of the PC. The accused failed to raise any reasonable doubt on the prosecution's case. The accused was found guilty and convicted for the charge framed against him. (para 190)

Obiter:

(1) The accused lamented that the charge against him was irrelevant and was a ploy by UMNO and Barisan Nasional's rival political party, to upend them, by targeting him. The accused's complaint was not novel; he was not the first politician charged for a criminal offence that has complained of a political conspiracy. The Federal Constitution clothes the Attorney General with the absolute power and unfettered discretion to prosecute criminal offences. The Judiciary plays no part in that role. It is not the Judiciary's place to question the decisions made to prosecute. The utmost role, for which every judge has taken an oath, is to uphold and protect the supremacy of the Federal Constitution. A judge's decision is made purely based on law and evidence; not sentiments or conjectures. The Judiciary does not partake in political shenanigans for it is above politics. The independence of the Judiciary is enshrined in the Federal Constitution. If any wrong is done, be it by the State or individuals, then it is for the courts to rectify or punish the wrong done. The courts of law are the bastion of justice for citizens. Let it remain that way. (paras 163-165)

Case(s) referred to:

Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Dato' Sri Mohd Najib Hj Abdul Razak v. PP [2019] 4 CLJ 799 HC ***(refd)***
Haris Fathillah Mohamed Ibrahim lwn. PP & Satu Kes Lagi [2018] 1 LNS 1054 HC ***(refd)***
Hj Abdul Ghani Ishak & Anor v. PP [1981] 1 LNS 96 FC ***(refd)***
Hodgson and Others v. Imperial Tobacco Ltd [1998] 2 All ER 673 ***(refd)***
HSBC Bank Malaysia Bhd v. Kanaga Laksmi & Ors [2017] 2 CLJ 587 HC ***(refd)***
Inder Singh and Another v. The State (Delhi Administration) AIR 1978 SC 1091 ***(refd)***
Khee Thuan Giap v. PP [2019] 1 LNS 568 CA ***(refd)***
Khoon Chye Hin v. PP [1961] 1 LNS 41 HC ***(refd)***
Kingtime International Ltd & Anor v. Petrofac E & C Sdn Bhd [2020] 1 CLJ 862 HC ***(refd)***
Liew Chee Hong v. PP [2007] 6 CLJ 702 CA ***(refd)***
Lim Guan Eng v. PP & Other Appeals [1998] 3 CLJ 769 CA ***(refd)***
Lim Kit Siang v. PP [1979] 1 LNS 47 FC ***(refd)***
Looi Kow Chai & Anor v. PP [2003] 1 CLJ 734 CA ***(refd)***
Mat v. PP [1963] 1 LNS 82 HC ***(refd)***
Miller v. Minister of Pensions [1947] 1 All ER 371 ***(refd)***
Mohammad Azanul Haqimi Tuan Ahmad Azahari v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2019] 8 CLJ 465 FC ***(refd)***
Mohd Khir Toyo v. PP [2015] 8 CLJ 769 FC ***(refd)***
Mohd Khir Toyo lwn. PP [2013] 5 CLJ 323 CA ***(refd)***

Muhammad Nabill Mohd Fuad v. PP [2020] 1 SLR 984 CA ***(refd)***
Mustapha Alias v. PP [2016] 1 LNS 1426 HC ***(refd)***
PP v. Abdul Rahman Akif [2007] 4 CLJ 337 FC ***(refd)***
PP v. Dato' Seri Anwar Ibrahim (No 3) [1999] 2 CLJ 215 HC ***(refd)***
PP v. Datuk Hj Harun Hj Idris (No 2) [1976] 1 LNS 184 HC ***(refd)***
PP v. Datuk Hj Harun Hj Idris & Ors [1977] 1 LNS 92 HC ***(refd)***
PP v. Kang Ho Soh [1991] 3 CLJ 2914; [1991] 3 CLJ (Rep) 557 HC ***(refd)***
PP v. Khafasliza Shafii [2018] 6 CLJ 98 HC ***(refd)***
PP v. Lin Lian Chen [1990] 2 CLJ 1020; [1990] 2 CLJ (Rep) 746 HC ***(refd)***
PP v. Lin Lian Chen [1992] 4 CLJ 2086; [1992] 1 CLJ (Rep) 285 SC ***(refd)***
PP v. Mark Koding [1982] 1 LNS 96 HC ***(refd)***
PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(refd)***
Prasit Punyang v. PP [2014] 7 CLJ 392 CA ***(refd)***
Tan Foo Su v. PP [1967] 1 LNS 179 HC ***(refd)***
Wan Marzuki Wan Abdullah v. PP [2013] 1 CLJ 177 FC ***(refd)***
Wong Swee Chin v. PP [1980] 1 LNS 138 FC ***(refd)***
Zulkefly Had lwn. PP & Satu Lagi Rayuan [2014] 6 CLJ 64 CA ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 15(1)
Criminal Procedure Code, ss. 7, 51A(3), 173(m)(i), 179(1), 180(1), (2), (3), (4), 182A, 402B, 417
Federal Constitution, art. 48(1)(e)
Financial Services Act 2013, s. 151(3)
Malaysian Anti-Corruption Commission Act 2009, ss. 50(3), 62(b)
Penal Code, ss. 21(i), 161, 165(c)

The Indian Penal Code [Ind], ss. 161, 165

Other source(s) referred to:
Ratanlal & Dhirajlal's Law of Crimes, 27th edn, vol 1, p 818

For the prosecution - Julia Ibrahim, Lailawati Ali, Hadariah Siri, Rullizah Abdul Majid, Natasha Abd Aziz, Aida Mastura & Mohamad Firdaus Mohamed Idris; DPPs
For the accused - Tan Hock Chuan, S Satharuban, Natalie Tan, Michele Lai Mei See, Aaron Lau & Cains Tan; M/s Tan Hock Chuan & Co

Reported by Najib Tamby

JUDGMENT

Mohamed Zaini Mazlan J:

Introduction

[1] The accused, a former Minister for the Federal Territories, was charged with accepting RM2,000,000 for himself without consideration, from a company that he knew had dealings with him in his official duties. He was charged under s. 165 of the Penal Code.

[2] The accused claimed that the RM2,000,000 was a political donation, and not for his benefit. It is a question of fact, whether he had accepted the RM2,000,000 for himself, or it was, as the accused contended, a political donation.

[3] The accused was initially charged in the Sessions Court. The case was subsequently transferred to the High Court pursuant to the accused's application under s. 417 Criminal Procedure Code, which was not objected to by the prosecution.

The Charge

[4] The charge against the accused under s. 165 of the Penal Code ('PC') is as follows:

> Bahawa kamu, pada 14 Jun 2016, di CIMB Bank Berhad, Cawangan Pusat Bandar Damansara, Level 1, Lot A4, Block A, Pusat Bandar Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, sebagai penjawat awam iaitu Menteri Wilayah Persekutuan, telah menerima untuk diri kamu sendiri suatu barang berharga dengan tiada balasan, iaitu, wang berjumah RM2,000,000.00 daripada Chai Kin Kong melalui cek Hong Leong Islamic Bank bernombor 136822 milik syarikat Aset Kayamas Sdn. Bhd. yang telah didepositkan ke dalam akaun CIMB Bank milik Tadmansori Holdings Sdn. Bhd. no. akaun 8001179747 yang didalamnya kamu mempunyai kepentingan, yang mana kamu ketahui syarikat Aset Kayamas Sdn. Bhd. ada perhubungan dengan kerja-kerja rasmi kamu sendiri, dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 165 Kanun Keseksaan.
>
> English translation
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> That you, on 14 June 2016, at CIMB Bank Berhad, Pusat Bandar Damansara Branch, Level 1, Lot A4, Block A, Pusat Bandar Damansara, in the Federal Territory of Kuala Lumpur, being a public servant, namely as the Minister for Federal Territories, accepted for yourself a valuable thing without consideration, namely, the sum of RM2,000,000.00 from one Chai Kin Kong by way of a Hong Leong Islamic Bank cheque no. 136822 belonging to Aset Kayamas Sdn. Bhd. that was deposited into CIMB Bank account no. 8001179747 belonging to Tadmansori Holdings Sdn. Bhd. in which you had an interest when you knew that Aset Kayamas Sdn. Bhd. had a connection with your official function, and you have thereby committed an offence punishable under section 165 of the Penal Code.

[5] In essence, the accused, in the capacity of a public servant, namely as the Minister for the Federal Territories, is charged with receiving for himself without consideration, a cheque for RM2,000,000 on 14 June 2016, from a company called Aset Kayamas Sdn Bhd ('Aset Kayamas'), through Tan Sri Datuk Chai Kin Kong (SP19) ('Tan Sri Chai'), where the cheque for RM2,000,000 was deposited in Tadmansori Holding Sdn Bhd's ('Tadmansori') bank account, a company that the accused had an interest in, and that the accused knew that Aset Kayamas had a connection with his official function as the Minister for the Federal Territories.

Prosecution's Witnesses

[6] Twenty-three witnesses were called to testify for the prosecution. They were as follows:

SP	Name	Designation
SP1	Muhamad Akmaludin bin Abdullah	Deputy Registrar, Companies Commission Malaysia
SP2	Khairolrony bin Kamrudin	Assistant Manager of CIMB Bank's Taman Setiawangsa branch
SP3	Daman Huri bin Nor	Division Secretary (Parliamentary and Constitutional Affairs), Prime Minister's Department
SP4	Nik Yahaya bin Nik Mustapha	The accused's former driver
SP5	Rabiatul Adawiyah binti Sobri	Assistant Accounts Manager of Tadmansori
SP6	Dato' Hasbi bin Jaafar	Chief Operating Officer of Tadmansori
SP7	Tan Sri Datuk Haji Mhd Amin Nordin bin Abd Aziz	Former Mayor of Kuala Lumpur
SP8	Yu Chong Shin	Operations Manager of Hong Leong Bank's Jalan Kenanga branch
SP9	AB Salim bin Mansor	Former Director of JPEPP, DBKL
SP10	Dato' Mohd Rahimi bin Rejab	The accused's former private secretary
SP11	Mohd Yushanizar bin Mohd Yusof	Rural & Town Planning Officer, DBKL
SP12	Mohd Jasni bin Jamaludin	Assistant Director JPEPP, DBKL
SP13	Dato' Zulkifli Ibrahim	Former Deputy Director General for Project Implementation and Maintenance Department, DBKL
SP14	Kamariah binti Ibrahim	Former Director JPEPP, DBKL
SP15	Razailia binti Khalid	Chief Assistant Director, JPEPP, DBKL

SP16	Lai Vui Kong	Financial Controller, Aset Kayamas
SP17	Nor Fajariah binti Sulaiman	Senior Deputy Director, JPEPP, DBKL
SP18	Tan Sri Datuk Seri Ahmad Phesal bin Taib	Former Mayor of Kuala Lumpur
SP19	Tan Sri Datuk Chai Kin Kong	Director of Aset Kayamas
SP20	Nik Muhamad Faiez bin Idris	Deputy Superintendent, Malaysian Anti-Corruption Commission
SP21	Farahdzilah binti Abd Kadir	Deputy Department Head of the UMNO headquarters' Finance Department
SP22	Datuk Lee Chen Kuen	Director of Aset Kayamas
SP23	Muhammad Saad bin Bordani	Investigating Officer, Malaysian Anti-Corruption Commission

Prosecution's Case

The Affordable Housing Project

[7] The accused was the Minister for the Federal Territories at the time that the alleged offence was committed. He had held that position since 2013. His tenure came to an end in 2018, which was incidentally the year that the last general election was held.

[8] Tadmansori was incorporated in 1987. It has a paid-up capital of RM100,000,000, with the accused owning the lion's share of RM99,999,996. The remainder RM4 is owned by Dato' DL Tengku Rethwan bin Tengku Mansor, his brother.

[9] Tan Sri Chai is a director in Aset Kayamas, a housing development company. He is a longtime friend of the accused. He had known the accused since the 80s, when he was then involved in the logging business in Jerantut, Pahang.

[10] The Ministry for the Federal Territories had in April 2013 launched an affordable housing project called "Rumah Mampu Milik Wilayah Persekutuan" (RUMAWIP). It targeted to build 80,000 affordable units by 2018. Land belonging to the Kuala Lumpur City Hall, or better known as "Dewan Bandaraya Kuala Lumpur" ('DBKL'), and the Federal Government were utilised for this project. The project would be based on DBKL's plans or proposals submitted by private companies.

[11] The accused was appointed as the Federal Territories Minister in 2013. He had in that same year asked Tan Sri Chai to participate in the affordable housing project. Tan Sri Chai duly obliged and had through several companies that he owned, including Aset Kayamas, bought several lands belonging to DBKL to implement the project.

[12] Aset Kayamas had through a letter dated 26 January 2015 to the accused, proposed to purchase a 4.05 acre DBKL land (Lot 53427 and Lot 53653) in Bandar Tun Razak, Kuala Lumpur ('the land'). It proposed to build low costs housing and freehold apartments on the land. Tan Sri Chai had on 27 January 2015 forwarded this letter to the accused personally. The accused penned his minutes on this letter in Tan Sri Chai's presence. His minutes were as follows:

> YBhg Dato Zul sila teliti cadangan ini dan jika boleh dilaksanakan mengikut kaedah kongsi sama. Harap maklumbalas sila bincang dengan syarikat.

[13] The minutes were for the attention of Dato' Zulkifli Ibrahim (SP13) ('Dato' Zulkifli'), who was then the Deputy Director General of DBKL's "Jabatan Pelaksanaan Projek dan Penyelenggaraan"[1]. This department oversees the implementation and maintenance of DBKL's projects. The accused's minutes, in essence, requested Dato' Zulkifli to study Aset Kayamas proposal, and whether the project could be carried out jointly with DBKL.

[14] Dato' Zulkifli responded through his letter dated 6 February 2015 to the accused's senior private secretary. He stated that there were already plans to build a hostel for DBKL's training institute on the land. He also suggested that the application be forwarded to the Deputy Director General for planning, as it involves the sale of DBKL's land.

[15] Aset Kayamas' proposal was then forwarded to "Jabatan Perancangan Ekonomi dan Penyelarasan Pembangunan"[2] ('JPEPP'). The then Mayor of Kuala Lumpur, Tan Sri Ahmad Phesal (SP18) ('Tan Sri Ahmad'), responded to Aset Kayamas' proposal through a letter dated 3 April 2015. Tan Sri Ahmad stated that Aset Kayamas' application could not be considered, as DBKL had already made plans to develop the land.

[16] Undeterred, Tan Sri Chai met up with the accused and Dato' Zulkifli a few times for meetings and discussions. It was then agreed that DBKL would accept Aset Kayamas' proposal, provided that it build a hostel for DBKL's training institute adjoining the land, and then sell it back to DBKL. Aset Kayamas followed up by writing another letter dated 20 April 2015 to the accused. It contained a proposal to build affordable apartments for phase 1, and freehold apartments for phase 2. Tan Sri Chai had forwarded this letter personally to the accused.

[17] The accused appended his minutes on the letter in Tan Sri Chai's presence as follows:

> YBhg Dato' Seri Datuk Bandar, Seperti yang saya bincangkan semalam sila bawa ke OSC untuk dipertimbangkan.

[18] The accused had referred to his discussion with Tan Sri Ahmad the previous day and instructed the latter to bring up Aset Kayamas' proposal to DBKL's "One Stop Centre" ('OSC') for consideration. Apparently, it was also agreed during his discussion with Tan Sri Ahmad that 0.5 acres of the land is put aside for the development of a hostel for DBKL's training institute.

[19] The OSC, a unit under the planning department, collate applications submitted for development and then distributes them to the relevant departments for processing. It will then arrange for the application to be considered by the centralised committee. Tan Sri Ahmad had on 27 April 2015, chaired a meeting for DBKL's privatisation projects, where it was also resolved there would be no objections for the land to be sold to Aset Kayamas for development.

[20] A special meeting was held by the OSC on 14 May 2015. It was chaired by the accused. They agreed to accept Aset Kayamas' proposal. JPEPP then issued an internal memo dated 27 May 2015 to Tan Sri Ahmad. The memo sets out Aset Kayamas' proposal and JPEPP's terms and conditions. It also sought for Tan Sri Ahmad's agreement and highlighted that the accused's consent, as the Minister for the Federal Territories, is required under the Local Government Act 1976 ('LGA 1976').

[21] Tan Sri Ahmad had on the same day issued a letter dated 27 May 2015 to the accused seeking consent. He had also in that letter stated that DBKL's management is amenable to Aset Kayamas' proposal, and set out DBKL's terms and conditions. The accused appended his minutes on the letter stating his agreement. The accused also signed a declaration of consent dated 28 May 2015 under the relevant provisions of LGA 1976.

[22] Tan Sri Ahmad followed through by issuing a letter dated 29 May 2015 to Aset Kayamas. In that letter, DBKL amongst others offered to sell the land based on the prevailing value plus 20% premium of its value. Aset Kayamas accepted the offer, and paid an earnest deposit of RM200,000 on 5 June 2015.

[23] What followed next was the valuation process for the land. The land was valued at RM21,302,000. The land was offered to Aset Kayamas at RM25,562,400, inclusive of the 20% premium, through DBKL's letter dated 18 August 2015.

[24] Aset Kayamas was not too keen on the price offered though. It had through a letter to the accused dated 26 August 2015, requested that the price of the land be reduced to a nominal value and that the 10% deposit payment be deferred. Tan Sri Chai again forwarded this letter to the accused personally, who then appended his minutes on the letter for the Mayor's attention. The accused instructed the latter to defer the payment of the 10% deposit for another three months. Tan Sri Ahmad had by then retired. His successor was Tan Sri Datuk Mhd Amin Nordin (SP7) ('Tan Sri Amin').

[25] Tan Sri Amin had through a letter dated 8 September 2015 to Aset Kayamas, stated that DBKL had no objections to extend the payment deadline for the 10% deposit by another three months, ie, 1 December 2015. As for the request to reduce the price of the land, Aset Kayamas was informed that its request will need to be submitted to the Ministry of Finance's Valuation and Property Management Department. Aset Kayamas did just that but was informed on 29 January 2016 that it was unsuccessful.

[26] Undeterred, Aset Kayamas wrote to the accused, through a letter dated 3 February 2016. It requested for the 20% premium on the land be reduced to just 10%. The company also requested that the deadline for it to pay the 10% deposit, which was by then overdue, to be extended to 1 April 2016. As usual, Tan Sri Chai handed this letter to the accused personally. The accused agreed with both requests and appended his minutes on the letter for Tan Sri Amin's attention. Tan Sri Amin then instructed the JPEPP director to carry out the accused's instruction.

[27] DBKL had through its letter dated 16 March 2016 to Aset Kayamas, informed the company that it had with the accused's approval, agreed to reduce the additional premium to just 10%, and to also extend the payment of the 10% deposit to 1 April 2016. The price of the land has now been reduced to RM23,432,200. The price was further reduced to RM20,538,519, as DBKL abandoned its plan to build the hostel, which meant that the acreage sold to Aset Kayamas would be lesser. This change was conveyed through DBKL's letter to Aset Kayamas dated 7 June 2016.

[28] There were no further impediments, as Aset Kayamas and DBKL then entered into a sale and purchase agreement dated 1 July 2016 for the land.

The RM2,000,000

[29] The accused at the material time was also the Secretary General of the United Malays National Organisation ('UMNO'), Malaysia's largest national political party founded in 1946. He had some time during the course of this project, asked Tan Sri Chai for a political donation. The accused told Tan Sri Chai that UMNO needed around RM5,000,000 to RM6,000,000 for two upcoming by-elections. These two upcoming by-elections were for the district of Kuala Kangsar in Perak, and Sungai Besar in Selangor. They were scheduled to be held on 18 June 2016.

[30] Tan Sri Chai was unable to commit then. He only told the accused that he would give the contribution when he has the funds. The accused told Tan Sri Chai to make the contribution to Tadmansori. Tan Sri Chai did not know who the company belongs to, nor did it cross his mind to ask the accused why the payment was to be made to Tadmansori and not UMNO. His companies had never dealt with Tadmansori.

[31] Tan Sri Chai then decided to contribute RM2,000,000, as that was all that he could afford to give. He instructed his staff to prepare the cheque and signed it. The cheque concerned was a Hong Leong Bank cheque number 136822 dated 14 June 2016 made payable to Tadmansori. Tan Sri Chai had handed this cheque over to the accused personally at the latter's office in DBKL on 14 June 2016, two days before the by-elections were scheduled to be held.

[32] The accused then handed the cheque to his driver, Nik Yahaya (SP4), on the same day, and instructed him to deposit the cheque into Tadmansori's bank account with CIMB bank. Nik Yahaya banked in the cheque into Tadmansori's account at the CIMB bank's Damansara Town Centre branch on the same day.

[33] That the cheque was duly presented on 14 June 2016, and credited into Tadmansori's CIMB bank account on 16 June 2016, was confirmed by Khairolrony bin Kamrudin (SP2), a bank officer with CIMB Bank, and Rabiatul Adawiyah (SP5) ('Rabiatul'), Tadmansori's Assistant Accounts Manager.

[34] Rabiatul testified that Tadmansori had never made any payments to UMNO. Both Rabiatul and Dato' Hasbi bin Jaafar (SP6) ('Dato' Hasbi'), the Chief Operating Officer of Tadmansori, also testified that Tadmansori has never had any dealings with Aset Kayamas.

The UMNO Receipt

[35] Learned counsel for the accused had in the course of cross-examining Tan Sri Chai, asked whether he had received any letter of acceptance/ acknowledgement or receipts, to prove the payment made by Aset Kayamas. Tan Sri Chai responded positively and fished out what he claimed to be an official UMNO receipt from his wallet. It was an original UMNO receipt no. 376241 dated 14 June 2016 for RM2,000,000, being "sumbangan PRK Kuala Kangsar dan Sungai Besar"[3] ('UMNO receipt'). This caught the prosecution team by surprise, who obviously had no inkling about the UMNO receipt.

[36] Tan Sri Chai claimed that the accused had given him the UMNO receipt two days after he had given the cheque for RM2,000,000 and that he had kept it in his office. He stated that the Malaysian Anti-Corruption Commission's ('MACC') officers had never asked him about any receipt

when they took his statements. He also claimed that he had looked for the UMNO receipt and found it in his office after giving his statements to MACC. He then kept it in his wallet, in case he was asked about it, but that moment never came.

[37] The prosecution team responded instantly during the trial upon the revelation of the UMNO receipt. An officer from the MACC went to the UMNO headquarters at the Putra World Trade Centre and seized three unused receipt books, and one receipt book from which the UMNO receipt was allegedly issued. These receipt books were tendered through Farahdzilah binti Abd Kadir (SP21) ('Farahdzilah'), the Deputy Head of the Finance Department at the UMNO Headquarters, who was called by the prosecution to testify. She identified the accused's signature on the UMNO receipt.

[38] The prosecution focused on the receipt book from which the UMNO receipt was allegedly issued from. This receipt book contained the duplicate copies of receipts from number 376201 to 376250. Farahdzilah stated that a receipt would be issued to the person concerned and that one duplicate copy would remain in the receipt book.

[39] The duplicate copy of the UMNO receipt, however, was conspicuously missing from this receipt book. It was incidentally the only duplicate copy missing. Farahdzilah could not explain it and stated that the receipt books were easily accessible.

[40] The prosecution highlighted through Farahdzilah that the first duplicate receipt (receipt number 376201) was dated 24 August 2017. The prosecution, however, chose to focus on the duplicate receipts that were issued before and after the UMNO receipt. The receipt issued before the UMNO receipt (receipt number 376240), was dated 12 November 2018, and the one after it (receipt number 376242) was dated 16 November 2018. The UMNO receipt, however, was dated 14 June 2016.

[41] Farahdzilah agreed with the learned counsel for the accused's suggestion that the accused had signed the receipt in his capacity as the "Pengerusi Badan Perhubungan UMNO Wilayah Persekutuan"[4], and that the donation was for that body, and not for the UMNO headquarters.

[42] Learned counsel for the accused then referred to the three unused receipt books (IDD77, IDD78 and IDD79) that were also seized by the MACC, and established through Farahdzilah that the serial numbers for these three unused receipt books precede that of the receipt book that was allegedly used to issue the UMNO receipt (IDD77 – serial numbers: 257901-257950; IDD78 – serial numbers: 310451-310500; IDD79 – serial numbers: 368401-368450). Farahdzilah also agreed with the suggestion that receipts were issued randomly, and not systematically.

[43] The UMNO receipt was initially marked as "IDD74", and the receipt book from which the UMNO receipt was allegedly issued was marked as "ID76" for identification, as the prosecution and the defence counsel had issues on their admissibility. It was agreed that both parties would submit on the admissibility of these two items at the end of the prosecution's case.

The Court's Duty At The End Of The Prosecution's Case

[44] The court will need to conclude whether the prosecution has made out a *prima facie* case against the accused at the end of the prosecution's case; s. 180(1) Criminal Procedure Code ('CPC'). The accused will only be called to enter his defence if a *prima facie* case has been proven against him, for he would otherwise be entitled to an acquittal; s. 180(2) and (3) CPC.

[45] The prosecution bears the legal burden of proving the charge against the accused beyond a reasonable doubt. It also bears the burden to adduce sufficient evidence to prove every single element of the offence alleged, to establish a *prima facie* case, which if not rebutted or unexplained, will result in a conviction; s. 180(4) CPC, *Balachandran v. PP*[5].

[46] The *dicta* by Lord Denning in *Miller v. Minister of Pensions*[6] elucidates the concept of reasonable doubt:

> It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice.[7]

[47] The court will also subject the prosecution's evidence to a maximum evaluation; *PP v. Mohd Radzi Abu Bakar*[8]. The inference favourable to the accused must be given for his benefit if there were more than one inference; *Liew Chee Hong v. PP*[9].

[48] The fundamental task of a trial judge at the end of the prosecution's case is to ask himself, whether he is prepared to convict the accused, should the accused opts to remain silent if the defence is called. If the answer is negative, then no *prima facie* case has been made out against the accused, and he should then be acquitted. This approach was set out by Gopal Sri Ram JCA (later FCJ) in the case of *Looi Kow Chai & Anor v. PP*[10] as follows:

> It therefore follows that there is only one exercise that a judge sitting alone under s. 180 of the Code has to undertake at the close of the prosecution case. He must subject the prosecution evidence to maximum evaluation and ask himself the question: If I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution case? If the answer is in the negative then no *prima facie* case has been made out and the accused would be entitled to an acquittal.[11]

Preliminary Issue

[49] There is one issue that I will at the outset need to address before going into the substantive issues. The defence had at the outset of the trial, contended that the presumption under s. 50(3) of the Malaysian Anti-Corruption Commission Act 2009 ('MACC Act 2009') is unconstitutional, as it abrogates the accused's rights to be presumed innocent until proven guilty. Although I am appreciative of the extensive research and submissions done by learned counsel for the accused, I find it unnecessary to address this issue as it will be academic. The prosecution has stated from the outset that it does not intend to rely on the presumption under s. 50(3) MACC Act 2009. The prosecution has contended that it intends to prove its case against the accused based on the elements under s. 165 PC alone.

Findings Of The Prosecution's Case

The Admissibility Of The UMNO Receipt And The Receipt Book

[50] It is imperative that I first address the issue on the admissibility of the UMNO receipt, and the receipt book from which it was allegedly issued. The prosecution's objection on the UMNO receipt is based on two grounds:

(i) That the accused in failing to furnish the UMNO receipt before the trial had flouted s. 62(b) MACC Act 2009; and

(ii) That the authenticity of the receipt is doubtful.

[51] I shall deal with each ground in turn.

(i) That The Accused Has Flouted Section 62(b) MACC Act 2009

Section 62 MACC Act 2009 reads as follows:

> 62. Defence statement
>
> Once delivery of documents by the prosecution pursuant to section 51A of the Criminal Procedure Code has taken place, the accused shall, before commencement of the trial, deliver the following documents to the prosecution:
>
> (a) a defence statement setting out in general terms the nature of the defence and the matters on which the accused takes issue with the prosecution, with reasons; and
>
> (b) a copy of any document which would be tendered as part of the evidence for the defence.

[52] The prosecution's objection premised on s. 62(b) MACC Act 2009 was on the basis that the accused had failed to forward to the prosecution a copy of the UMNO receipt before the commencement of the trial. The prosecution submitted that the fact that Tan Sri Chai claimed to have received the UMNO receipt from the accused himself, and that the receipt

bore the signature of the accused, meant that the accused had known of this receipt. The accused could have therefore procured the UMNO receipt and forward it to the prosecution pursuant to s. 62(b) of the MACC Act 2009.

[53] I am of the view that s. 62(b) MACC Act 2009 is merely a procedural requirement. It is similar in nature to s. 51A CPC, where the prosecution is required to amongst others, forward documents that it intends to tender as part of its evidence against the accused before the trial. I take the view that both s. 51A CPC and s. 62 MACC Act 2009 are meant to regulate and facilitate trial proceedings. It cannot be meant to regulate the admissibility of documents, which should instead be regulated by the law of evidence.

[54] I am fortified in my view with the provisions of s. 51A(3) CPC, where it stipulates that a document shall not be inadmissible merely because the prosecution has failed to deliver to the accused any document that it intends to tender as the prosecution's evidence. Section 62 MACC Act 2009 must therefore be read in the same context as s. 51A CPC.

[55] Section 62 MACC Act 2009 and s. 51A CPC are pre-trial procedures and designed to ensure that trials are conducted efficiently *vis-a-vis* disclosure. Although it is desired that disclosures are made timeously to prevent surprises, the overriding concern should be on the evidentiary value of the document sought to be produced.

[56] Another factor that I have considered is that the accused did not seem to be aware of the UMNO receipt. That was at least how it was portrayed during the trial, and there is no cogent evidence to suspect otherwise, despite how suspicious it seemed to the prosecution. Mere suspicions have no evidentiary value in a criminal trial. The accused could not be faulted for not producing the UMNO receipt pursuant to s. 62(b) MACC Act 2009. It would have been a different consideration if it was proven that the accused knew, and had possession of the UMNO receipt before the trial commenced.

(ii) That The Authenticity Of The Receipt Is Doubtful

[57] The prosecution referred to the receipt book from which the UMNO receipt was allegedly issued from (ID76), and highlighted that the receipt issued before the UMNO receipt was dated 12 November 2018 and that the one after it was dated 16 November 2018. The UMNO receipt, however, was dated 14 June 2016. There is obviously a two-year gap between the UMNO receipt and the receipt before and after it. The prosecution also pointed out that the duplicate copy of the UMNO receipt in the receipt book was missing. The prosecution in contesting the authenticity of the UMNO receipt emphasised that the date of the UMNO receipt, 14 June 2016, is inconsistent with the date of the receipts issued before, and after it. The prosecution contended that the accused had concocted the receipt, as it was no coincidence that he was arrested on 14 November 2018.

[58] The prosecution also alluded to the investigating officer's testimony, Muhammad Saad bin Bordani (SP23), that Tan Sri Chai had never informed him of the UMNO receipt's existence during the investigation, even though his team had requested him and his company to produce any relevant documents given to him, or his company about the RM2,000,000. It was highlighted that Tan Sri Chai could and should have told the MACC about the UMNO receipt if there was indeed one issued. The investigating officer also claimed that he did not search the UMNO headquarters for any receipts, as the money was paid to Tadmansori, and not UMNO.

[59] Learned counsel for the accused in rebuttal submitted that the UMNO receipt was an original copy, and not a photocopy. The case of *Public Prosecutor v. Lin Lian Chen*[12] was cited, where it was held that the defence is entitled to introduce a defence exhibit favourable to his case during the prosecution's case if there are lawful means for him to do so. This principle was resonated by the Supreme Court on appeal; *Public Prosecutor v. Lin Lian Chen*[13].

[60] In my opinion, although the prosecution has raised meritorious grounds in its objection to the admissibility of the UMNO receipt, the fact remains that the receipt produced was an original. I therefore, ruled to admit the UMNO receipt as a defence exhibit and marked it as exh. D74. Having ruled on its admissibility however, is not an end to all. What is more material is the weight to be attached to the UMNO receipt, which I shall address subsequently.

[61] I now turn to the receipt book produced by the prosecution. This receipt book was produced after Tan Sri Chai had produced the UMNO receipt during the trial, and was obtained from UMNO's headquarters. It had also been verified by Farahdzilah (SP21). I therefore rule that this receipt book is admissible as an exhibit, and marked it as exh. P76.

The Charge

[62] I shall now move on and address the prosecution's case. Section 165 PC reads as follows:

> Public servant obtaining any valuable thing, without consideration in any proceedings or business transacted by such public servant
>
> 165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested

A in or related to the person so concerned, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

[63] Reading s. 165 PC can be daunting, as all the elements of the offence are set out in one long paragraph. It has been the subject of numerous cases.
B I shall however, refer to Federal Court and the Court of Appeal's judgment in the leading case of *Mohd Khir Toyo v. PP*[14], where both courts have set out the elements as follows:

(i) That the accused is a public servant;

C (ii) That he has accepted or obtained for himself a valuable thing;

(iii) That he gave no consideration for the valuable thing, or gave a consideration that he knew to be inadequate; and

(iv) That the accused knew that the person from whom he accepted the valuable thing had connections, or likely to be concerned in any
D proceedings or business transacted with his official functions as a public servant, or of any public servant that he is subordinate to, or from a person known to the accused to be interested in, or related to the person concerned.

E **[64]** In applying the elements of s. 165 PC against the accused in particular, the prosecution would need to satisfy beyond a reasonable doubt that:

(i) The accused, as the Minister for the Federal Territories, was a public servant;

F (ii) He had received RM2,000,000 from Tan Sri Chai for himself;

(iii) There was no consideration given for the RM2,000,000; and

(iv) He knew that Tan Sri Chai had connections with his official functions.

[65] I shall deal with each element in turn.

G *(i) That The Accused, As The Minister For The Federal Territories, Was A Public Servant*

[66] The prosecution's case is that the offence that the accused was claimed to have committed, was done in his capacity as the Minister for the Federal Territories.

H **[67]** The definition of a "public servant" is set out under s. 21 PC. The pertinent provision in respect of the accused is under s. 21(i) PC, which states:

I

"Public servant"

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following:

...

(i) every officer whose duty it is, as such officer, to take, receive, keep or expend any property, on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, **and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty;**

(emphasis added)

[68] A person in the service or pay of the Government, or is remunerated by fees or commission for the performance of public duty, is deemed as a public servant; *Mohd Khir Toyo v. PP*[15].

[69] The accused's appointment as a Federal Minister by His Highness the King is apparent from the Instrument of Appointment dated 16 May 2013. That the accused held the position of the Minister for the Federal Territories from May 2013 to 2018 was established through the testimonies of Daman Huri (SP3), the Division Secretary (Parliamentary and Constitutional Affairs) in the Prime Minister's Department, and Mohd Rahimi (SP10), the accused's former Senior Private Secretary. As a Minister, the accused would invariably be entrusted to perform public duties.

[70] That the accused was paid a monthly salary of RM14,907.20, and allowance of RM24,320 from the Government during his tenure as the Minister for the Federal Territories, was also established through Daman Huri (SP3).

[71] It is evident that the accused was paid by the Government to perform public duties in his capacity as the Minister for the Federal Territories, and is therefore, a public servant. I am therefore satisfied that the first element has been satisfied.

(ii) That He Had Received RM2,000,000 From Tan Sri Chai For Himself

[72] It would require a finding of fact, to establish this element. One of the keywords used in s. 165 PC is "a valuable thing". The valuable thing here is undoubtedly the RM2,000,000 given by Tan Sri Chai. Money is clearly a valuable thing, being an intrinsic necessity of modern society. Illustration (c) of s. 165 PC makes it abundantly clear:

A (c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. **The money so obtained by A is a valuable thing** obtained by him without adequate consideration.

(emphasis added)

B

The sum of RM2,000,000 is, without a doubt, a valuable thing and fulfils the criteria under s. 165 PC.

[73] What is deemed as a valuable thing under s. 165 PC, however, must be analysed on a case to case basis. A thing may be valuable to the accused C alone, and not to anyone else. A personal diary that one had lost a long time ago, for example, could be valuable to the owner, although it may of scant value to others. What is valuable, in my estimation, must be viewed objectively and subjectively.

[74] Tan Sri Chai had readily admitted giving RM2,000,000 to the accused D personally through an Aset Kayamas cheque dated 14 June 2016. The cheque was made out to Tadmansori, as instructed by the accused. Tan Sri Chai did not question the accused why he wanted the cheque to be made payable to Tadmansori, and nor did the accused give him any reasons. Aset Kayamas has never had any dealings with Tadmansori, as testified by Tan Sri Chai and E the employees of both companies.

[75] The accused then handed over the cheque to his driver, Nik Yahaya (SP4), and instructed him to deposit the cheque into Tadmansori's account. The cheque was subsequently cleared, and the amount of RM2,000,000 credited into Tadmansori's account. The sequence of events from Tan Sri F Chai instructing Aset Kayamas' Financial Controller, Lai Vui Kong (SP16), to prepare the cheque of RM2,000,000 in favour of Tadmansori and the payment voucher, up to the amount being credited into Tadmansori's account, has been satisfactorily explained through Aset Kayamas' employee (SP16), Tadmansori's employee (SP5), and the bank officers (SP2 and SP8). G The facts that I have set out thus far are undisputed.

[76] Now s. 165 PC states it an offence if the accused had received a valuable thing "for himself or for any other person". The crucial issue here is whether the accused had received the RM2,000,000 for himself. It was however put by the defence that the sum concerned was a donation for H UMNO, and not for the accused's personal benefit.

[77] It is pertinent to firstly address the fact that the cheque was made payable to Tadmansori, and not in the accused's name. The preliminary issue is whether the payment could as such be deemed to benefit the accused, and not the company.

I

[78] Evidence led from the officer of the Companies Commission of Malaysia (SP1), establishes the fact that the accused is the majority shareholder of Tadmansori. He owns 99.99% of Tadmansori's shareholdings, and that this had always been the state of affair from the time that the company was incorporated.

[79] Datuk Mohd Hasbi (SP6), the Chief Operating Officer of Tadmansori, testified that the accused was the decision maker when it came to the company's financial affairs, being the predominant shareholder. He also testified that the accused had a say in the company's operations.

[80] The ownership of a company is determined through its shareholdings. The fact that the accused owned 99.99% of Tadmansori, and that the only other shareholder owns a minuscule 0.01% leads to the inevitable conclusion that the accused stands to benefit directly from any payment made to the company, being the largest shareholder. Evidence has also been led to show that the accused runs the company, and is the primary decision maker. He is essentially the *alter ego* of the company. Payments to Tadmansori would as such stand to benefit the accused.

[81] I will now come to the issue of whether the RM2,000,000 given was solicited by the accused for himself, or was a political donation for UMNO. Tan Sri Chai had unequivocally testified in examination- in-chief and under cross-examination, that the accused had solicited from him a political donation for UMNO. The accused told him that UMNO would require funds of between RM5,000,000 to RM6,000,000 for the by-elections. A lot of reliance was placed on the UMNO receipt to substantiate the accused's contention that the RM2,000,000 was indeed a political donation meant for UMNO, and not for the accused. The defence team also referred to the prosecution's opening statement, where it was stated that the prosecution will lead evidence to show that the accused had solicited a political donation from Tan Sri Chai for the upcoming by-elections, and that Tan Sri Chai had given the money for that very purpose. The defence also highlighted that the investigating officer (SP23) had under cross-examination, admitted that his investigations reveal that both the accused and Tan Sri Chai had stated the same thing when their statements were taken by the MACC. Datuk Mohd Hasbi (SP6), Tadmansori's Chief Operating Officer, had under cross-examination testified that he had called the accused to inform him that the cheque has been cleared, and that the accused had during that telephone conversation told him that the funds were meant for the by-elections.

[82] Learned counsel for the accused cited the case of *Lim Guan Eng v. PP & Other Appeal*[16], and in submitting that the prosecution is bound by the evidence of its own witnesses, cited the following passage from the Court of Appeal's judgment:

A

> Now among the general rules that govern judicial appreciation of evidence in both civil and criminal cases in the adversarial system of justice, there is one of fundamental importance. It is that a party is bound by evidence of witnesses whom he calls in proof of his case[17]

[83] With respect, it would not be complete to cite the proposition without
B citing the passage following it, where the appellate court went on to elaborate as follows:

> However, the law, recognising that much depends upon the human factor and vagaries of life, refuses to lay down any absolute rule in the matter of evidence evaluation. Witnesses are but human. Testimony may often
C be coloured by emotion, benign or malice. Not all witnesses speak the whole truth, despite the oath or affirmation administered to them. Not all witnesses are devoid of bias of one sort or another. Recollection of events is seldom, if ever, perfect. Two or more persons witnessing the same incident may give varying, yet truthful, accounts of it according to their perception. There are so many other imponderables. The law would
D fail to meet the needs of society whose affairs it regulates if it does not take into account the incalculable variables that enter upon the scene when questions of appreciation of evidence arise.[18]

[84] I had earlier ruled that the UMNO receipt is to be admitted as evidence and marked as a defence exhibit, as the receipt produced is an
E original. Admitting it however is not the end of it. The weight to be attached to this receipt is for the court to evaluate.

[85] The UMNO receipt alone cannot be taken as incontrovertible proof that the RM2,000,000 was a political donation. I have grave reservations on the UMNO receipt for several reasons. Firstly, I find it incredible that Tan
F Sri Chai did not think it crucial to inform the MACC officers of the existence of the UMNO receipt, when he appeared before them several times for his statements to be taken. The prosecution had during re-examination showed Tan Sri Chai the statements that he had made to the MACC on the three occasions that he was there, to refresh his memory whether he had raised the
G issue of the receipt. It confirmed that he never did. Even if assuming that he had only found the UMNO receipt after MACC had completed its investigation on him, one would have expected him to inform the MACC the minute he found the UMNO receipt. Tan Sri Chai himself has testified that he had known the accused for a long time and has clearly developed a close
H relationship with the accused. One would also have expected him to seize the opportunity to exculpate the accused, and not merely keep the UMNO receipt.

[86] I would also expect Tan Sri Chai to have given the UMNO receipt to the relevant employees in Aset Kayamas, namely Lai Vui Kong, Aset
I Kayamas' Financial Controller (SP16), as the latter was the one that oversaw the preparation of the cheque and handed it over to Tan Sri Chai. If Aset Kayamas had issued the RM2,000,000 as a political donation, it would have

been necessary for the company to have a copy of the UMNO receipt for auditing and record purposes. I find it highly questionable that this was not done, particularly if Tan Sri Chai had indeed received the UMNO receipt from the accused two days after he had given the cheque.

[87] The Court of Appeal in *Lim Guan Eng v. PP & Other Appeal* (*supra*) recognised that there may be witnesses that the prosecution would need to call to unfold its narrative of the case, but witnesses could end up being bias towards the accused due to their relationship. The relevant portion of the judgment is as follows:

> In no case is this especially true as in the trial of criminal cases where the Public Prosecutor initiates the court's process in the public interest. The Public Prosecutor is often compelled to call witnesses to formally establish facts that are necessary for the unfolding of the story that lies at the heart of his case. Some of these witnesses may, by reason of close relationship or loyalty, exhibit a natural bias in favour of the accused. They may, out of eagerness to help the accused, furnish answers under cross-examination that are favourable to the defence and stretch the truth to the point of incredulity. If the general rule is applied with unbending strictness in such cases, substantial justice will not be achieved. The approach that is to adopted by a trial court in such cases appears in the judgment of Wan Yahya J, (as he then was) in *Hj Abdul Ghani Ishak & Anor v. Public Prosecutor* [1981] 1 LNS 96; [1981] 2 MLJ 230.[19]

[88] It is a fact that Tan Sri Chai had known the accused for many years, and had dealt with each other during that time. It is also apparent that the accused had done favours for him, and he in turn too had done favours for the accused. Tan Sri Chai, in my opinion, had demonstrated his biasness in favour of the accused in respect of the UMNO receipt. I will therefore disregard his testimony only in respect of the UMNO receipt.

[89] This however does not mean that I need to dismiss his testimony entirely. It is settled law that a trial judge is at liberty to choose and reject any part of the evidence of a witness. Thomson CJ delivering judgment for the High Court in *Khoon Chye Hin v. PP*[20] held:

> If a witness demonstrably tells lies on one or two points then it is clear that he is not a reliable witness and as a matter of prudence the rest of his evidence must be scrutinised with great care and indeed with suspicion. To say, however, that because a witness has been proved a liar on one or two points then the whole of his evidence "must in law be rejected" is to go too far and is wrong.[21]

[90] In *Haji Abdul Ghani Ishak & Anor v. PP*[22], one of the prosecution's witnesses was the accused's wife. Part of her testimony favoured the accused. Learned counsel for the accused had urged the court to accept her testimony *in toto*. Wan Yahya J (as he then was) in his wisdom refused and held as follows:

A The witness Kipah is the wife of the 1st accused and she had to be called by the prosecution to fill up the chain of events in that case. Answers elicited from her cross-examination by the defence has to be scrutinised with some care. As a wife testifying in a serious case against her husband, she could not be expected to be entirely immune from being unbiased, or in any event, uninterested. Moreover, when there are other evidences to B the contrarv this court *is not bound to accept each and every word in her evidence. If what was suggested is to be followed in the unqualified form the function of a trial judge or jury will become obsolete and such function could be better decided by computer. There is nothing to deter the trial judge or jury picking or choosing any piece of evidence from a witness while rejecting others which he or they felt not credible enough. After all a witness is capable of saying both truths and untruths. If, for any* C *good reason, the court feels that part of his evidence should be preferred to the other, then it is at liberty to accept that part and reject the others.* Indeed this has to be so when dealing with human as opposed to mechanical factors. That is partly why we are here to adjudge a case. This rule is not entirely without precedents. In *Lim Yow Choon v. Public Prosecutor* [1972] 1 MLJ 205, D Azmi LP at page 206 said:

> In reference to the second question, we are of the view that notwithstanding that the cautioned statement was part of the evidence for the prosecution, and that there are facts in the cautioned statement which appear to contradict other parts of the evidence led by the prosecution, it was still open to the trial court E as a judge of facts to assess the evidence and in so doing accept part of it and reject the rest.

Secondly, in the renowned case of *Public Prosecutor v. Datuk Haji Harun bin Hj Idris* [1977] 1 MLJ 15 at page 19 Raja Azlan Shah FJ observed:

F There is no rule of law that the testimony of a witness must either be believed entirely or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other. It is, therefore, necessary to scrutinise each evidence very carefully as this involves the question of weight to be given to certain evidence in particular circumstances.[23]

G (emphasis added)

[91] It is indeed the duty of a trial judge to carefully sieve through and attach the necessary weight on the testimonies of witnesses. Witnesses being mere mortals are not expected to be perfect in every form, be it their memory or demeanour. A witness may tell the truth on some points, and conversely H tell lies on others. He may only remember some matters, and there are of course those who choose to have selective memories. They can also be motivated by certain factors. The evidence given by witnesses are not easily discernible as distinguishing the colour black from white all the time. There are the grey areas that a trial judge will need to be wary off, and it could very I well be many shades of grey. The task to accept or reject the evidence remains the prerogative of the trial judge.

[92] I have also scrutinised the UMNO receipt. It was crisp and new, which I find remarkable, considering that it was issued some four years ago in June 2016, and subsequently kept in Tan Sri Chai's wallet. The fact that the UMNO receipt was signed by the accused has not escaped my observation. Of more relevance is the receipt book from which the UMNO receipt was issued (P76). The fact that the only duplicate copy missing in this receipt book was that of the UMNO receipt raises a red flag. Even more alarming is the fact that the date of the UMNO receipt is not in sequence to the receipts issued before and after it. The receipt issued before the UMNO receipt (receipt number 376240), was dated 12 November 2018, and the one after it, (receipt number 376242) was dated 16 November 2018. The UMNO receipt however was dated 14 June 2016. All the other receipts in that receipt book were in sequence, save for the UMNO receipt. The first receipt in the book was dated 24 August 2017, and the last one was dated 6 May 2019. The UMNO receipt was glaringly the only one out of sequence.

[93] Learned counsel for the accused contended that Farahdzilah from the UMNO headquarter had agreed with the suggestion that receipts were issued randomly and not systematically. She had agreed with this suggestion when she was referred to the other three unused receipt books (IDD77, IDD78 and IDD79) that were also seized by the MACC, and that the receipt numbers for these three unused receipt books precede that of the receipt book that was used to issue the UMNO receipt (IDD77 – serial numbers: 257901-257950; IDD78 – serial numbers: 310451-310500; IDD79 – serial numbers: 368401-368450). That may very well be the case, but in my opinion is only applicable in respect of receipt books, and not receipts issued from a particular book. As I have highlighted earlier, the UMNO receipt was the only one not issued in sequence in that particular receipt book (P76).

[94] Another factor that has captured my attention is the fact that the receipt was issued by UMNO to Aset Kayamas. The cheque was made out to Tadmansori. The receipt for the RM2,000,000 should have therefore been issued by Tadmansori. It is a common practice for a receipt to be issued by the one that received the proceeds. A receipt serves as an acknowledgement of the amount received from the giver. It makes no sense for UMNO to issue the receipt when the cheque was not banked into its account. If the money was indeed meant for UMNO, the latter could have instead given Tan Sri Chai or Aset Kayamas, any other form of acknowledgement for the alleged donation given, such as a letter for example, and not a receipt. Any auditors auditing UMNO's accounts would question the UMNO receipt, as there was no payment of RM2,000,000 made into UMNO's account.

[95] I had in taking into account all these factors, come to the conclusion that the UMNO receipt must be treated with absolute suspicion, and will not attach any weight to it.

[96] This brings into focus the critical issue of whether the accused had kept the RM2,000,000 for himself. It is conclusive that the monies were paid into Tadmansori's account. I had earlier established that payment into Tadmansori's account counts as a benefit to the accused. The accused's contention that the payment was for the benefit of UMNO can only be accepted if there was a corresponding payment to UMNO from Tadmansori. There was none. The money trail stopped with Tadmansori. In fact, the evidence shows that Tadmansori has never had any dealings with UMNO. This was established by Tadmansori's own employees.

[97] The only plausible conclusion is that the payment was meant to benefit the accused. The fact that the accused had specifically instructed Tan Sri Chai to make the cheque payable to Tadmansori and not to UMNO, could only mean that he intended to benefit himself.

[98] A similar situation arose in *PP v. Khafasliza Shafit*[24]. The accused in that case was also charged under s. 165 PC but was acquitted by the Sessions Court at the end of the trial. The prosecution succeeded in its appeal at the High Court. The accused there had solicited RM3,000 from a contractor that was awarded a project by the Machang Drainage and Irrigation Department. That the accused was an employee with the department and a public servant is not an issue. The contractor had banked in RM3,000 into the accused's personal account as instructed by the latter. The accused had in her defence contended that she had solicited the RM3,000 as a donation for the 'Association of women in the public service'[25], and also the department's sports club. The accused claimed that she was entrusted to raise funds for the association, being the Head of its Economic Bureau. She was also one of the signatories to the sports club's account. Ahmad Bache JC (now judge of the High Court) found the accused's explanation illogical, as logic dictates that the accused should have directed the contractor to deposit the money into the association or club's bank account if it was indeed meant as a donation, and not into her personal bank account.

[99] Learned counsel for the accused had stressed the fact that Tan Sri Chai was told by the accused that the monies were meant as a political contribution for UMNO. I take the view that Tan Sri Chai's intention is not crucial. Motive on the part of the giver under s. 165 PC is immaterial. It is the intention of the recipient that is pertinent. The crucial element is whether the recipient intended to receive the valuable thing for himself. In my opinion, the accused intended to receive the RM2,000,000 for himself from the inception.

[100] The clandestine manner that the accused had solicited from Tan Sri Chai is disquieting. If the contribution was meant for UMNO, the cheque or any payment in whatever form should be made payable to UMNO, the intended recipient. The accused should have instructed Tan Sri Chai to make

the cheque payable to UMNO. He could subsequently claim reimbursement from UMNO for the expenses that he paid for in advance. UMNO is after all an established political party that would have proper funding procedures. The accused was at the material time amongst others, UMNO's Secretary General, and should therefore know the proper procedure. Surely it would not have been extremely difficult for him to be reimbursed by UMNO. This would have been the proper method. The fact that Tan Sri Chai had presented the cheque to the accused in his office at DBKL is also telling, as Tan Sri Chai's company was at that time dealing with DBKL.

[101] In *PP v. Datuk Haji Harun Haji Idris (No. 2)*[26], the accused who was then the Chief Minister of Selangor, was charged with corruption. The accused claimed that the monies given were political donations. Justice Raja Azlan Shah (as His Highness was), found the circumstances in which the monies were given unlike the normal circumstances expected of a donation. The relevant passage of His Lordship's judgment is as follows:

> The manner in which the payments were made is a relevant consideration in the present case. ...
>
> Then, the "request" for the so called donation. That is another telling point against the accused. In ordinary circumstance, the presentation of donation, be it by way of cheque or otherwise, is preceded by certain formalities, for example, a representative of the donor firm would personally hand it to the donee at a proper place and in the presence of witnesses: not some "back alley". I am quite sure that the donor wants to be present to show that he is participating in whatever worthy cause the donee is undertaking, be it politics, charity, education or welfare. The donation is then properly presented and properly acknowledged.[127]

[102] I am mindful of the fact that not all donations are presented in the manner that Raja Azlan Shah J (as His Highness was) had cited. I would however expect UMNO to be aware of the alleged donation made. RM2,000,000 is not an insignificant amount. There was no evidence to show that UMNO was made aware of the alleged donation, let alone payment made to it.

[103] The manner in which the accused acted, if to be believed, gave one the impression that he was given *carte blanche* to manage UMNO's funds. I hesitate to think that this was the case. It would be a disquieting state of affairs for UMNO if the accused is simply allowed to dictate his own terms, such as getting donors to pay into his own account allegedly for the party. There was no evidence to suggest that what the accused had done, was known to, or acquiesced by UMNO's leadership or management, or that it was an accepted practise. The accused's version is quite simply self-serving.

[104] Learned counsel for the accused highlighted that the prosecution had in its opening statement stated lucidly that the accused had asked for a political donation from Tan Sri Chai. It was also pointed out that the prosecution had in the very same statement alluded to the fact that Tan Sri

Chai had given the RM2,000,000 for that very reason. It was contended that the essence of the prosecution's opening statement itself goes against the crux of the charge against the accused.

[105] The provisions for the prosecution's opening statement is under s. 179(1) CPC, where it states that the prosecution shall open its case by stating the nature of the offence charged, and the evidence that it proposes to prove the accused's guilt. Opening statements by the prosecution serves to inform the court and the accused of the layout of its case. It is the prosecution's roadmap. The prosecution should not be strictly tied down to its opening statement and must be given the liberty to conduct its case as it deems fit during the trial. The apex court's remarks in *Wan Marzuki Wan Abdullah*[28] is instructive:

> The contents of the opening statement of the learned deputy should not be taken as conclusive so as to disallow any further evidence to be adduced irrespective of it being fresh or consequential. We would further say that an opening statement in any trial should be taken as merely a guide to the court and the parties before it of the evidence likely to be adduced in order to prove or rebut a charge, claim or defence thereof. Indeed, an opening statement should not be allowed to lock out any fresh or clarifying evidence which may be relevant and necessary in the interest of justice.[29]

[106] I am nevertheless of the view that the statement highlighted by the accused's learned counsel should not be read in isolation. The prosecution had in the following paragraphs stated that the accused had accepted the RM2,000,000 for himself without valuable consideration. It is the prosecution's case that what the accused asked for, and what he did subsequently were diametrical, with the latter act infringing s. 165 PC.

[107] It was also pointed out by the defence that some of the prosecution's witnesses testimonies lend credence to Tan Sri Chai's contention that the RM2,000,000 was a political donation. Datuk Mohd Hasbi (SP6) for instance, had under cross-examination stated that the accused had in a telephone conversation informed him that the RM2,000,000 was meant as a political donation for the two upcoming by-elections. The other testimony referred to was that of investigating officer, Muhammad Saad (SP23). He agreed when suggested by the learned counsel for the accused that both Tan Sri Chai and the accused had when giving their statements to the MACC emphatically stated that the amount given was meant as a political donation for the two by-elections.

[108] The accused may very well have told Datuk Mohd Hasbi that the cheque was for a political donation. Similarly, Tan Sri Chai too was told that it was allegedly for UMNO. That was however what the accused wanted them to believe. Their perception does not exculpate the accused, as that was

not the case. The fact remains that there was no payment made to UMNO from Tadmansori. It does not legitimise the fact that the accused had received the money for himself.

[109] I will briefly address one aspect of the prosecution's submissions. The prosecution contended that even if the RM2,000,000 was a political donation, it benefited the accused, as he would be held in high esteem by the members of UMNO. I have disregarded this point, quite simply for the fact that it was merely an assumption, as there was no evidence led to prove this assertion. Furthermore, I fail to see how this proposition could fulfil the elements of s. 165 PC.

[110] The accused as a high ranking member of UMNO should have known that it would only be proper for the contribution to be made to UMNO directly. There was no conceivable reason for the monies to be paid to a distinct entity that had no relationship with UMNO. In this case, the payment was made to Tadmansori, which clearly proves that the accused intended for the payment to benefit himself. I am therefore resolute in concluding that the accused had received the RM2,000,000 for himself. The prosecution has as such successfully established this element of s.165 PC.

(iii) That There Was No Consideration Given For The RM2,000,000

[111] A consideration, in legal parlance, is something that is given or promised by one party in exchange for something given or promised by the other party. It may not be equal in value to the thing given, but must be of value to the parties involved. A forbearance could also be construed as a consideration.

[112] It is therefore incumbent on the prosecution to prove that the accused had received the RM2,000,000 from Aset Kayamas without any consideration given.

[113] It has been established that Aset Kayamas had no business dealings with Tadmansori Holdings. The various personnel from Tadmansori and Aset Kayamas have stated this fact with certainty and went unchallenged. The evidence led proved that the RM2,000,000 was credited into Tadmansori's bank account through Aset Kayamas' cheque. That was the end of the money trail. As I had made the finding earlier that the beneficiary of the RM2,000,000 was the accused, it is crucial to show that he had given something to Aset Kayamas in consideration for the monies received. There was none.

[114] I therefore find that the prosecution has succeeded in establishing the final and fourth element of the offence.

(iv) He Knew That Tan Sri Chai Had Connections With His Official Functions

[115] All that is required for the prosecution to prove is that the accused knew that Aset Kayamas had connections with his official function as the Federal Territories Minister. There is no necessity to prove that the accused had used his position to help Aset Kayamas in its dealings with his ministry or DBKL.

[116] The evidence clearly shows that the accused knew that Aset Kayamas had dealings with DBKL, in his official capacity as the Minister for the Federal Territories. Tan Sri Chai had from the onset approached the accused with Aset Kayamas' proposal through the letter dated 26 January 2015. In fact, it was the accused who had encouraged Tan Sri Chai to participate in the Federal Territories Ministry's affordable housing project scheme.

[117] When Aset Kayamas ran into a few snags with the project, it was the accused that Tan Sri Chai approached directly. Tan Sri Chai had on at least three occasions met the accused to personally hand over Aset Kayamas' letters (letters dated 27 January 2015, 20 April 2015, 26 August 2015 and 3 February 2016).

[118] That the accused was actively involved with Aset Kayamas' project is evident through the many minutes that he appended on Aset Kayamas' letters dated 26 January 2015, 20 April 2015, 26 August 2015, 3 February 2016, and Tan Sri Ahmad's letter to him dated 27 May 2015. He had also given his consent as the Minister for the Federal Territories as required under the LGA 1976, by signing a declaration of consent dated 28 May 2015. The accused was also instrumental in firstly, getting Aset Kayamas' request to extend the deadline to pay the 10% deposit for three months, and secondly, the latter's request to reduce the additional premium for the land from 20% to 10%. He also chaired the special meeting of the OSC on 14 May 2015, where it was resolved to accept Aset Kayamas' proposal.

[119] Learned counsel for the accused went into great length on the accused's noble intention in spearheading the affordable housing project for the benefit of Kuala Lumpur's residents and also DBKL's staff. Learned counsel also meticulously highlighted the process that Aset Kayamas' application went through, and exhorted that at no time did the accused abuse his powers, and nor were there any breach of the law on the process and approval obtained.

[120] I do not propose to make any finding whether the accused had exercised his official functions legitimately or otherwise by favouring Aset Kayamas in return for gratification, as that is not the essence of s. 165 PC. This section is in contrast to s. 161 PC, where the latter pertains to gratification accepted as a motive or reward for a favour given in exercising his official duties. Section 165 is wider than s. 161 PC, as motive is

immaterial. It is designed to prohibit a public servant from accepting any valuable thing without consideration, or inadequate consideration, from a person that has connections with his official functions. There is no necessity to prove that the accused had accepted the valuable thing in return for a favour. This patent distinction was highlighted by the authoritative authors of *Ratanlal & Dhirajlal's Law of Crimes* (27th edn) vol. 1, as follows:

> The difference between the acceptance of a bribe made punishable under section 161 and section 165 is that under the former section the present is taken as a motive or reward for abuse of office; while under the latter section the question of motive or reward is wholly immaterial and the acceptance of a valuable thing without consideration or with inadequate consideration from a person who has or is likely to have any business to be transacted, is forbidden because though not taken as a motive or reward for showing any official favour, it is likely to influence the public servant to show official favour to the person giving such valuable thing[30]

(Note: The reference was made to s. 161 and s. 165 of the Indian Penal Code, which was in *pari materia* with ours, save for the punishment. These sections have since been repealed in India.)

[121] There is as such no necessity for me to make a finding whether the accused had performed or abused his official functions with an ulterior purpose or otherwise. The mischief aimed under s. 165 PC is to prevent any public servant from accepting any valuable thing without adequate consideration from anyone that has dealings with their work, lest they be influenced by the valuable thing given, or abuse their position for a reward. Public servants are expected to perform their duties without fear nor favour. They are remunerated by the Government to do the job entrusted. Their reward should come from the satisfaction of completing their tasks dutifully.

[122] From the evidence adduced, I have reached the inevitable conclusion that the accused knew that Tan Sri Chai had connections with his official function as the Minister for the Federal Territories. His knowledge can be clearly gleaned from his direct involvement with Tan Sri Chai of Aset Kayamas in every aspect of the project undertaken by the latter. I am therefore satisfied that the prosecution has proven the fourth element.

Decision At The End Of The Prosecution's Case

[123] I had in giving the prosecution's case the maximum evaluation, find that the prosecution had succeeded in proving a *prima facie* case against the accused in respect of the charge against him. The prosecution had adduced credible evidence to prove every element of the offence under s. 165 PC, which if unrebutted or unexplained, would warrant a conviction as required under s. 180(4) CPC.

[124] I had therefore called upon the accused to enter his defence. He elected to give evidence on oath and tendered a witness statement pursuant to s. 402B CPC.

The Defence

[125] The accused and three other witnesses testified for the defence:

SP	Name	Designation
SD1	Tengku Adnan bin Tengku Mansor	Former Federal Territories Minister
SD2	Datuk Mohd Rafi bin Alli Hassan	The accused's former political secretary
SD3	Datuk Rizalman bin Mohktar	Head of UMNO's Bandar Tun Razak division
SD4	Datuk Zakaria bin Dullah	Head of UMNO's Simpang Renggam division

The Accused's Background

[126] The accused had an illustrious political career. He had been a member of UMNO since 1969 and had risen the ranks steadily. He was a Treasurer in 1988, a member of the Supreme Council in 1993 and 2004, an Executive Secretary in 1999, the Federal Territory Liaison Chairman in 2000, Chief of UMNO's Putrajaya Division in 2003 and 2004, UMNO's Secretary General from 2008 to 2018, and UMNO's Treasurer again in 2018. He was also appointed as Barisan National's (a coalition of political parties which included UMNO) Federal Territory Chairman in 2001.

[127] He was sworn in as a Senator in December 2000, and was subsequently appointed as the Deputy Minister in the Prime Minister's Department in September 2001. He has held several ministerial posts since: Minister in the Prime Minister's Department in November 2002, Tourism Minister in February 2006, and the Minister for the Federal Territories in 2013, a position which he held until 2018. He had been a Member of Parliament for the Putrajaya constituency for many years, having succeeded in the 11th, 12th, 13th and 14th General Elections.

[128] He was active in business before joining the Cabinet in 2001, and claimed to have held positions in public and non-public listed companies. He admitted owning Tadmansori, and that it was a family-owned company that has seen its paid-up capital rose to RM100 million from an initial RM100,000. The company's business is multifold: manufacturing, agriculture, food, real estate, hotels and investment. The accused claimed that Tadmansori's achievements were the envy of many.

[129] The accused stated that he had only embarked into politics to serve the nation and its people. He claimed that the charge levelled against him is irrelevant, and a conspiracy designed by another political party to bring UMNO and Barisan Nasional down, as he holds prominent positions and is

seen as their funder. In his own words: "So, to kill me is to kill UMNO/ Barisan Nasional."[31] He asserted that he had given an undertaking to give financial support to UMNO as its treasurer, an obligation that he claimed to have started back in 1988 when he was UMNO's youth wing's treasurer. He claims that the latter still owes him RM17,000,000 million.

The Declaration Of Assets

[130] The accused reiterated that he was already a successful businessman before joining the Cabinet in 2001. He was prepared to produce his "Declaration of Assets" for 2001, 2006, 2013 and 2016 ('the declarations') that were submitted to the Prime Ministers then, to prove his wealth. The accused had at this point during the trial, requested that the proceedings be done *in camera*, pursuant to s. 15(1) Courts of Judicature Act 1964 ('CJA 1964'). The accused was apprehensive of his assets and that of his family be made known publicly, as he was fearful for his and his family's safety. I had dismissed the application and will elaborate on this issue later. The accused opted not to tender the declarations as defence exhibits in light of the denial. He had nevertheless orally testified the value of his assets declared, which were RM938,643,566.16 in 2001, RM711,325,822 in 2006, RM691,770,649 in 2013 and RM782,748,061 in 2016. He said RM2,000,000 was merely pocket money to him.

The Affordable Housing Project

[131] He had in his capacity as the Federal Territories Minister, obtained the Cabinet's approval to allow DBKL to enter into joint ventures with developers when the affordable housing project was launched for the Federal Territories in 2013. This method enabled DBKL to do outright sales of its land to the developers, who would then develop them based on what has been agreed. There were other advantages. His ministry for example would not require funding from the Government, and that the developers would need to handle any problems involving squatters on the land bought, which were then a thorny issue. The accused claimed that this method would not only fulfil the housing quota set by the Government, but would also increase DBKL's coffer.

[132] The accused had known Tan Sri Chai for more than thirty years, dated back to the days when they had dealings in the logging business. He had approached Tan Sri Chai to take part in the affordable housing projects, as he deemed the latter to be a capable developer.

[133] The accused also acknowledged and confirmed the various correspondences and proceedings on Aset Kayamas' dealings with DBKL. He also admitted appending the minutes on some of the relevant letters. The accused maintained that the whole process on Aset Kayamas' purchase of the land and the project was done legitimately, and that he had not committed

anything illegal or extraordinary. He had for instance approved Aset Kayamas's request to defer payment of the deposit, as the company's request to reduce the value of the land would take time. He maintained that it was DBKL that decided to extend the time, and not him. He also maintained that at no time did he interfere with the valuation of the land, as it was under the jurisdiction of the valuation department under the Ministry of Finance. The accused also stated that he had acquiesced to Aset Kayamas' request to reduce the land's premium from 20% to 10%, and for a further extension of time to pay the deposit, as the request was reasonable. Aset Kayamas after all had agreed to build a hostel for DBKL, and that the process to consider the request for the reduction would also take time. He maintained that the set procedures on approving Aset Kayamas' various requests were dutifully adhered to, irrespective of the fact that he was the Minister and was in favour of the requests.

The RM2,000,000

[134] The by-elections for the parliamentary seats of Sungai Besar and Kuala Kangsar became necessary after the Members of Parliament for both constituencies perished in a helicopter crash in Sarawak. The accused claimed that it was his responsibility, as the Chairman of UMNO and Barisan Nasional Federal Territories Division, to raise funds for these by-elections.

[135] He admitted soliciting Tan Sri Chai for donations in early June 2016 to finance the two by-elections. He thought nothing of it, as Tan Sri Chai had been making donations to UMNO and Barisan Nasional from the time that he was appointed as UMNO's Executive Secretary in 1999. The accused did ask Tan Sri Chai to donate between RM5,000,000 to RM6,000,000 initially. Tan Sri Chai did not commit to that figure and merely said that he would donate later. When Tan Sri Chai eventually told the accused that he would be donating RM2,000,000 but would require some time to raise the funds, the accused said that he would advance the RM2,000,000 to UMNO first, as he trusted Tan Sri Chai to keep his pledge.

[136] The accused admitted receiving the cheque for RM2,000,000 from Tan Sri Chai on 14 June 2016, but claimed that it was given a tad late, as the by-elections were scheduled to be held on 18 June 2016. According to the accused, political donations are usually given in cash, but claimed that Tan Sri Chai had found it difficult to raise RM2,000,000 in cash, and gave a cheque for RM2,000,000 instead. The accused had asked Tan Sri Chai to make out the cheque to Tadmansori, as he had already used his own money for UMNO's by-election campaign expenses. He also stated that it is common knowledge within UMNO that he had often made advances to the party, and would look for donations and sponsors for UMNO's activities.

[137] The accused exhorted that he would not have asked Tan Sri Chai to make the cheque payable to Tadmansori had he intended to utilise it for himself, as the banking trails would be apparent. He was adamant that the RM2,000,000 was for UMNO's benefit, and that he never intended to pocket it for himself.

The UMNO Receipt

[138] The accused explained that he had used UMNO Headquarters receipt for Tan Sri Chai's contribution, as the Federal Territory UMNO does not have receipt books. He had issued the UMNO receipt to Tan Sri Chai, but could not remember who wrote the details on the UMNO receipt, as he had only signed it in his capacity as the UMNO Federal Territory Liaison Chairman. He had no knowledge why there were no duplicate copies of the UMNO receipt in the receipt book concerned, and pointed out that anyone working at the finance and administration department of the UMNO headquarters had access to all the receipt books.

The Sungai Besar And Kuala Kangsar By-election Expenses

[139] According to the accused, each UMNO and Barisan Nasional State Liaison would form their teams for a by-election. Datuk Rizalman bin Dato' Mokhtar (SD3) ('Datuk Rizalman') was appointed as the Head of Operations for the Sungai Besar by-elections by the Federal Territory UMNO. Datuk Rizalman had initially discussed with the accused's political secretary at that time, Datuk Mohd Rafi bin Alli Hassan (SD2) ('Datuk Mohd Rafi') about the budget required for the expenditure of the Sungai Besar by-election. The accused subsequently met both of them. The budget of RM1,300,000 suggested by the duo was whittled down to RM1,013,200 by the accused. A copy of the budget for the expenses was produced through Datuk Rizalman. It showed details of the items to be spent on the campaign. The accused had advanced his own money amounting to RM1,013,200. He gave the sum in cash to Datuk Mohd Rafi, who subsequently handed it over to Datuk Rizalman.

[140] Both Datuk Mohd Rafi and Datuk Rizalman testified that the accused had never depended on funds from the UMNO Headquarters to carry out UMNO Federal Territory's political activities, and that he would either use his own money or political donations. Both Datuk Mohd Rafi and Datuk Rizalman echoed what the accused had said on the funding arrangements for the Sungai Besar by-election.

[141] The accused had in his capacity as the Secretary General of UMNO and Barisan Nasional, appointed Datuk Zakaria bin Dullah (SD4) ('Datuk Zakaria') to assist in the election operations for the two by-elections. Datuk Zakaria was the coordinator for the Barisan Nasional's Youth Volunteer project. Youths were recruited as volunteers for various community

programs under this project. The youths under this project were enlisted to help with the Sungai Besar and Kuala Kangsar by-elections. They were involved in numerous community programs, such as organising sports activities, breaking of fast events, distributing food and groceries to the community and so on. This project required funds.

[142] Datuk Zakaria had prepared a budget of RM1,007,600 involving 1,000 youths. A copy of the budget was tendered through him. The accused had no issues with the budget proposed and advanced his own money by giving RM1,007,600 in cash to Datuk Zakaria. Similar to the testimonies of Datuk Mohd Rafi and Datuk Rizalman, Datuk Zakaria too testified that the accused had never received any funding from UMNO or Barisan Nasional, and that he had always used his own money.

Duty Of The Court At The Conclusion Of The Trial

[143] The accused is presumed innocent until proven guilty. This tenet of criminal law has withstood the test of time. The burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial. No similar burden is placed on the accused to prove his innocence, as he merely needs to cast reasonable doubt on the prosecution's case for an acquittal; s. 182A CPC; *PP v. Abdul Rahman Akif*[32].

[144] It is incumbent on the court to consider and critically analyse all the evidence produced by the prosecution and the defence; *Prasit Punyang v. PP*[33]; *Zulkefly Had lwn. PP & Satu Lagi Rayuan*[34].

[145] The procedure for the court at the end of the trial is set out under s. 182A CPC:

> 182A – Procedure at the conclusion of the trial
>
> (1) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.
>
> (2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.
>
> (3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal.

[146] The Federal Court in *PP v. Mohd Radzi Abu Bakar* (*supra*), held that the following steps set out in *Mat v. PP*[35], should be followed at the end of the trial:

(a) If you are satisfied beyond reasonable doubt as to the accused's guilt.	Convict
(b) If you accept or believe the accused's explanation.	Acquit
(c) If you do not accept or believe the accused's explanation.	Do not convict but consider the next steps below.
(d) If you do not accept or believe the accused's explanation, and that explanation does not raise in your mind a reasonable doubt as to his guilt.	Convict
(e) If you do not accept or believe the accused's explanation, but nevertheless it raises in your mind a reasonable doubt as to his guilt.	Acquit

Findings

Application For Proceedings To Be Heard In Camera

[147] I will first address the accused's application to hold the trial proceedings *in camera* pertaining to the declarations. These declarations supposedly contained details of the accused's family assets. Learned counsel for the accused sought to rely on s. 15(1) CJA 1964 which states:

> Courts to be open and public
>
> 15(1) The place in which any Court is held for the purpose of trying any cause or matter, civil or criminal, shall be deemed an open and public court to which the public generally may have access:
>
> Provided that the Court shall have power to hear any cause or matter or any part thereof *in camera* if the Court is satisfied that it is expedient in the interests of justice, public safety, public security or propriety, or for other sufficient reason so to do.
>
> ...

[148] Relying on the phrase "expedient in the interests of justice" or "for other sufficient reason so to do", it was submitted that the court has the inherent jurisdiction to order the proceedings to be conducted *in camera*. The accused's concern is his family's safety. Learned counsel for the accused cited the cases of *Tan Foo Su v. PP*[36], *Kingtime International Ltd & Anor v. Petrofac E & C Sdn Bhd* [2020] 1 CLJ 862*, Mohammad Azanul Haqimi Tuan Ahmad Azahari v. Timbalan Menteri Dalam Negeri, Malaysia & Ors*[37] and *PP v. Kang Ho Soh*[38] in support.

[149] The prosecution in response submitted that the accused did not demonstrate how his application would be "in the interest of justice" as stipulated in s. 15(1) CJA 1964, and exhorted that the declarations that the accused had submitted were in compliance with the "Kod etika bagi anggota-anggota pentadbiran" (Code of ethics for administrative personnel), and were not privileged documents.

[150] The phrase "*in camera*" is Latin for "in chambers", which connotes a judge's chambers when used in the context of legal proceedings. Proceedings are however not necessarily conducted in the judge's chambers and can be done in the courtroom. *In camera* proceedings are conducted in the presence of the judge, counsel, and only the necessary parties involved in the litigation, *sans* the public. They are normally reserved for exceptional circumstances, such as those involving minors or matters of national security. These are just some of the instances. I do not propose to set out an exhaustive list. The discretion, however, lies with the court.

[151] It is a general rule that court proceedings are open to the public and that the public has access to it to observe proceedings. That is provided for under s. 15(1) CJA 1964. The requirement to hold criminal proceedings in open court is specifically set out under s. 7 CPC:

> Courts to be open
>
> 7. The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open and public Court to which the public generally may have access.

[152] The word "may" in s. 7 CPC suggests that there may be occasions where the court may restrict access to the public. Similarly, s. 15(1) CJA 1964 too provides some exceptions for proceedings to be held *in camera*. The relevant provisos relied on by the accused come under "expedient in the interests of justice", or "for other sufficient reason to do so". In gist, the accused is fearful for his safety and that of his family, should their assets be made known to all and sundry.

[153] The cases cited by learned counsel for the accused, with respect, do not advance the propositions submitted. The first plaintiff in *Kingtime International Ltd & Anor v. Petrofac E & C Sdn Bhd* (*supra*) had sought to discover some documents in the defendant's possession, in aid of its application for an account of the profits made by the defendant. This was done pursuant to the court's finding that the defendant had infringed the first plaintiff's patent. The defendant had sought for a "protective order"' over its documents. The basis for the defendant's application, in that case, is poles apart from that of the accused, for the defendant's concern there was the confidentiality of the documents belonging to it, and that of a third party not involved with the suit. The defendant's application there for a "protective

order" is quite distinct from the accused's application, as the former seeks to protect its documents from disclosure, where else the accused here sought to hold the trial *in camera*.

[154] The case of *Mohammad Azanul Haqimi Tuan Ahmad Azahari v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* (*supra*), concerns an application for *habeas corpus.* The apex court was faced with the conflicting evidence in the appellant and respondent's affidavit, which apparently could have been resolved, had the respondent revealed the minutes of the Advisory Board's hearing. The respondent in refusing to reveal the minutes contended that the minutes were confidential, to which the apex court opined that it could view the minutes *in camera*. In contrast, the accused here had never contended that the information in the declarations is confidential.

[155] The case of *HSBC Bank Malaysia Bhd v. Kanaga Laksmi & Ors* [2017] 2 CLJ 587, concerns the provisions of s. 151(3) of the Financial Services Act 2013, which allowed court proceedings to be held *in camera* where the documents produced are subjected to Bank Negara Malaysia's[39] privilege and subjected to a secrecy obligation. The accused's declarations and any information contained within them do not come within the realm of this provision.

[156] In *PP v. Kang Ho Soh*[40], the learned trial judge, Justice Shankar J noted that two of the witnesses for the prosecution appeared very frightened when testifying. He found it obvious that they were giving evidence under grave apprehension. The learned judge noticed that there were two men seated in the public gallery staring intently at these two witnesses. Although the learned judge could not say decisively whether they were intimidated by the two men seated in the public gallery, His Lordship remarked that consideration should be given to hold the trial proceedings *in camera*, if hostility is sensed from the public gallery. In my opinion, Justice Shankar's remarks would come within the provisos of s. 15 CJA 1964, as it would have been in the interests of justice or other sufficient reason to ensure that the witnesses could testify without fear or apprehension.

[157] The germane issue here is whether the accused's fear for his safety and that of his family are sufficient reasons to fulfil the provisos under s. 15(1) CJA 1964, namely whether it would be expedient in the interests of justice, or any other sufficient reason to do so. Would justice be served if the accused's application is granted?

[158] I am of the view that granting the accused's application would be contrary to the interests of justice. I am mindful of the fact that the accused was a former Federal Minister, and that this case has garnered public interest. The trial proceedings must be done transparently. The public has a right to hear what the court hears, and see what the court sees. This way, the public would be able to appreciate any decision reached by the court, and not be kept guessing or speculate due to any evidence being kept out of public knowledge.

[159] The English Court of Appeal in *Hodgson and Others v. Imperial Tobacco Ltd*[41] remarked that:

> The best way of avoiding ill-informed comments in the media in the case of this nature when the interest of the public is high, is for the court to be as open as is possible and practicable, not only in relation to the trial but also in relation to the interlocutory proceedings which have to take place prior to that trial.

[160] Closer to home, Justice Nazlan Ghazali in the recent case of *Dato' Sri Mohd Najib Hj Abdul Razak v. PP*[42] had this to say regarding our open justice system:

> Open Justice System
>
> In addition, the proposed gag order, in terms being applied for, also does not sit comfortably with the provision of s. 15 of the Courts of Judicature Act 1964 which requires the courts to be open and public. This embodies the universally cherished open justice system applied in most democracies.
>
> *For a criminal trial like the one before this court where the State through the Public Prosecutor is prosecuting on behalf of society, members of the society, being the public, have the right to observe the proceedings and judge for themselves whether an accused is being afforded a fair trial. The open justice concept also involves the right of the media to report on judicial proceedings, in fulfilment of the public's right to information on trial proceedings.*
>
> There are of course exceptions to the requirement of open justice in cases involving the interest of justice, public security and public safety. But these usually concern cases on terrorism and sexual offences against children.[43]
>
> (emphasis added)

[161] The declarations, as rightly pointed out by the prosecution, do not come under any known category of secret or confidential information. It may expose the accused's wealth to the public, but that is a move that the accused will need to consider for himself if the declarations were meant to help him in his defence. Lest I be accused of being insensitive towards the accused and his family's safety, it is a valid concern, and I am certain that it is a concern that any wealthy person would have. It is nevertheless not unique to the accused alone. The overarching concern however must be that of the public. The provisos in s. 15 CJA 1964 clearly states that it must be expedient in the interests of public safety, public security and property, and not that of an individual. The public's right to access the trial outweighs the accused's concern.

[162] I had, based on these reasonings, find that the accused has failed to convince this court that it would be expedient in the interests of justice, or show any sufficient reason to seek for the proceedings in respect of the declarations be held *in camera*.

The Political Conspiracy

[163] I would be remiss if I do not address the accused's misgivings on the charge against him. He lamented that the charge against him is irrelevant, and is a ploy by UMNO and Barisan Nasional's rival political party to upend them by targeting him.

[164] The accused's complaint is not novel. He is not the first politician charged for a criminal offence that has complained of a political conspiracy. I would only need to hearken back to the 70s. The late Datuk Haji Harun Idris, a well-known politician, who was then the Chief Minister of the State of Selangor, and a rising star in the ranks of UMNO, was charged with two others for forgery for the purpose of cheating, and criminal breach of trust, in the case of *Public Prosecutor v. Datuk Haji Harun bin Haji Idris & Ors*[44]. The learned judge, Abdoolcader J (as he then was), had a word or two to say about the political innuendos claimed:

> It would also appear that in the course of this trial political undertones and overtones seem to have infiltrated but I must make it abundantly clear that I have only allowed such matter as is strictly and properly relevant to the case and particularly that for the defence. In determining this matter I am not concerned with any of the political matters introduced in evidence except in so far as they are pertinent to or have a bearing upon the case presented before me. I am of course in this trial moved by no considerations other than that of determining whether or not on the evidence adduced and in law the charges preferred are strictly sustainable within the confines of the Penal Code.[45]

[165] I too have something to say. Our Constitution clothes the Honourable Attorney General with the absolute power and unfettered discretion to prosecute criminal offences. The Judiciary plays no part in that role. It is not our place to question the decisions made to prosecute. Our utmost role, for which every judge has taken an oath, is to uphold and protect the supremacy of our Constitution. Our decisions are made purely based on the law and evidence, and not sentiments or conjectures. The Judiciary does not partake in political shenanigans, for it is above politics. The independence of the Judiciary is enshrined in the Constitution. If any wrong is done, be it by the State or individuals, then it is for the courts to rectify or punish the wrong done. It has been said many times, that the courts of law are the last bastion of justice for the citizens. Let it remain that way.

The Charge

[166] That the accused, as the Minister for the Federal Territories, was a public servant, and that Tan Sri Chai had connections with his official functions when the alleged offence took place, was not disputed. The accused's testimony had confirmed these two elements of s. 165 PC. I had nevertheless when analysing the evidence given during the defence stage, considered again these two elements, and remained satisfied that they have been fulfilled.

[167] Much has been said by both parties about Aset Kayamas' dealings with DBKL for the affordable housing project. I find that the prosecution had at best, insinuated that the accused's overbearing stature, had influenced the DBKL officials into acceding to most of Aset Kayamas' numerous requests. The accused had of course, contended otherwise, and maintained that the processes were legitimately done. I maintain the view that these are not pertinent issues to be considered in respect of the charge. The offence under s. 165 PC, concerns the act of receiving a valuable thing without consideration, from a person that had official dealings with the accused. Whether the accused had committed any wrongs pertaining to Aset Kayamas' dealings with DBKL, is not a factor that needs to be considered when dealing with s. 165 PC.

[168] The second and third elements under s. 165 PC, namely, whether the accused had received the RM2,000,000 for himself, and that there was no consideration given for it, will need to be scrutinised in depth.

The RM2,000,000

[169] The essence of the accused's defence is that the RM2,000,000 was not for his benefit, but was meant for, and accepted as a political donation for UMNO. I will first address the accused's reliance on Tan Sri Chai's testimony, who testified that the accused had asked him for a political donation for UMNO, and that he had given it for that reason alone.

[170] I am resolute that the intention of the giver is not a material consideration under s. 165 PC. I have elaborated on this point and shall not expound further. I am nevertheless mindful, that the accused's reliance on Tan Sri Chai's testimony is also to corroborate his defence, that he had never intended to accept the money for himself, and that it was meant for UMNO's coffers as a political contribution.

[171] I pause to note that although s. 165 PC makes provision for the valuable thing to be procured, or obtained for "another person", the prosecution's case is that the accused had accepted the RM2,000,000 "for himself". The prosecution could have framed the charge, to state that the accused had received it for UMNO, being "another person", but had in this case, determined that the accused had pocketed it for himself. The primary issue, therefore, is whether the accused had accepted the RM2,000,000 for himself.

[172] I had in ruling that the prosecution had proven a *prima facie* case, relied on amongst others, the fact that there was no corresponding payment from Tadmansori to UMNO. That fact led to the conclusion that the accused had received the RM2,000,000 for himself. This factor remains the fulcrum of the prosecution's case.

[173] The accused claimed that he had instructed Tan Sri Chai to make the cheque payable to Tadmansori, as the contribution came late, some two days before the by-elections, and that he had already advanced his funds for the by-election expenses. He intended to be reimbursed from the RM2,000,000 given by Tan Sri Chai. I suppose the prosecution could alternatively assert that the reimbursement was also a benefit to the accused, as he would otherwise be out of pocket by about RM2,000,000. This is however not the prosecution's case.

[174] When the accused first solicited for a political donation from Tan Sri Chai, he had requested for a donation of between RM5,000,000 to RM6,000,000. The latter could not commit then. The accused claimed that Tan Sri Chai had after some time, informed him that he would be contributing RM2,000,000 and that he would be issuing a cheque, as he could not raise the cash in time. The accused claimed that he had asked Tan Sri Chai to issue the cheque in Tadmandsori's name, as he would be using his funds first. It was submitted that the accused had therefore spent RM2,000,000 of his funds first, in reliance of Tan Sri Chai's pledge to give that same amount.

[175] I noted that Tan Sri Chai had in his witness statement, stated that the accused had at that meeting, told him to issue the cheque in Tadmansori's favour. This fact was not contested by the defence when Tan Sri Chai testified. It is apparent that the accused had from the onset, wanted the payment to be made to Tadmansori. Furthermore, it was never put to Tan Sri Chai, that he had subsequently told the accused that he would contribute RM2,000,000 and that the accused had told him that that he would use his funds first, pending Tan Sri Chai contributing. This factor is crucial, as Tan Sri Chai had never told the accused the amount that he would contribute. That Tan Sri Chai had only decided to give RM2,000,000, only came to light when he gave the accused the cheque on 16 June 2018. It is trite that the defence's version must be put to the prosecution's witnesses in cross-examination, failing which, the testimony could not be disputed; *PP v. Dato' Seri Anwar Ibrahim (No 3)*[46]. It is apparent that the accused never knew the amount that Tan Sri Chai would give, not until the date that he presented the cheque to the accused, which was on 16 June 2016. It is also apparent that the accused had from the very beginning, intended the payment to be made to Tadmansori.

The UMNO Receipt

[176] As for the UMNO receipt, the accused had in his witness statement contended that he had no knowledge why there were no duplicate copies of the UMNO receipt in the receipt book (ID76), and stated that it was not his duty to handle the receipt books, and that the responsibility lies with the staff in the finance and administrative department of UMNO Headquarters. The accused however gave a contrasting answer during cross-examination. He

claimed that the duplicate copies of the UMNO receipt were not in the receipt book because he had pulled them out, as the money was not meant for UMNO Headquarters, and is meant for UMNO Federal Territories. He also claimed that the duplicate copies of the UMNO receipt were not kept for UMNO Federal Territories' records, as he wanted to maintain the confidentiality of the donations made. The disparity is telling. The explanation is unconvincing. I am more convinced than before that the UMNO receipt is suspect, and maintain my earlier finding that there shall be no weight attached to the UMNO receipt. On that score, I am now minded to admit the other three receipt books as defence exhibits (IDD77 to ID77, IDD78 to ID78 and IDD79 to ID79), as the receipt books were originals seized from the UMNO Headquarters.

Reimbursements

[177] The accused had during cross-examination, agreed with the suggestion that UMNO would reimburse him for any advances that he makes on its behalf. He had stated this fact in his witness statement. This proves that there is a proper method adapted by UMNO, for advances to be made and reimbursed, which could only mean that what the accused had done in this case was unorthodox. There is no evidence to suggest that what the accused did was the norm and an accepted procedure in UMNO. If UMNO Headquarters can reimburse expenses made on its behalf, then UMNO Federal Territories too should be able to do the same. The accused also testified that he did not inform anyone in the upper echelon of UMNO of the RM2,000,000, as it was allegedly for the Federal Territories UMNO. He reiterated the fact that he was the Chairman. He also stated that the Federal Territories UMNO do not keep records of donations made to it, and that the reason for him using UMNO Headquarters' receipt is because the Federal Territories UMNO do not have receipt books. It seems to me that the surreptitious manner in which the accused runs the Federal Territories UMNO, gave him the ultimate freedom to control its funding and operation without being accountable.

Undertaking

[178] The accused had referred to UMNO's financial statements for the year 2019, and highlighted the auditor's remark at para. 1(a) p. 11, where it was stated that the financial statement was prepared based on a continuous effort, as UMNO's Treasurer had given an undertaking to provide financial support to fulfil its responsibilities and meet its liabilities. This remark serves to augment his assertion that he provides financial support to UMNO in meeting its obligations and liabilities. I am unable to appreciate the accused's contention, as the by-elections were held in 2016. The accused was not UMNO's Treasurer then. He only became the treasurer in 2018. That he bore the responsibility to raise funds for UMNO, would have been a more plausible explanation if he was its treasurer in 2016. He was not.

The By-Elections

[179] I now come to the accused's contention that he was responsible to raise funds for the two by-elections and had done just that. He claimed that he needed to raise funds for the UMNO/Barisan Nasional Federal Territories division for the two by-elections, as he was their Chairman. He stated this clearly in his witness statement. This strikes me as odd, particularly as Sungai Besar is in the State of Selangor, and Kuala Kangsar is in the State of Perak. He had in his witness statement stated that each UMNO and Barisan Nasional State Liaison would form their own teams for a by-election. It would have therefore made sense for him to bear the responsibility of raising funds if the by-elections were to be held in the Federal Territories, which would come under his purview as the Chairman of UMNO/Barisan Nasional Federal Territories. These two by-elections were clearly in two other States, namely Selangor and Perak. It would have therefore been the responsibility of the respective State Chairman, and not the accused. The accused's contention, that he bore the responsibility to raise funds for the two by-elections, as the Chairman of the Federal Territories UMNO/Barisan Nasional, by any stretch of the imagination could not be true.

[180] I will now address the testimonies of Datuk Rizalman, who the accused claimed was in charge of the Sungai Besar by-elections and Datuk Zakaria, the coordinator for Barisan Nasional's youth volunteer program. I will first address the budget sheet prepared by Datuk Rizalman. This budget sheet is a simple one-page budget itemising the twelve items that Datuk Rizalman claimed to have spent for the Sungai Besar by-elections. He admitted that he had prepared the budget sheet for the trial based on memory, as he had disposed of the original and any supporting receipts soon after the by-election ended. The total came up to RM1,013,200. The budget sheet prepared by Datuk Zakaria too was similar. It was a simple one-page sheet itemising ten items that he claimed to have spent RM1,007,600 for the two by-elections. He had also produced a report on the activities carried out. Similar to Datuk Rizalman, he too claimed to have disposed the receipts and supporting documents in respect of the items spent.

[181] I have grave doubts on the veracity of the budget sheets produced by both personalities. The budget sheet prepared by Datuk Rizalman was prepared based on his recollection and done for the trial. I find it astonishing that he could remember the exact details of the expenditure that occurred four years ago, particularly when he admitted having disposed of all the receipts related to the alleged expenditures incurred. The total amount stated in the budget sheet was RM1,013,200. I had made my calculations. The final figure is RM986,200. The alleged budget sheet was hastily made up. The budget sheet prepared by Datuk Zakaria was equally doubtful, as he admitted

during cross-examination that it was merely an estimate of the proposed expenditure. I also find it remarkable that he has disposed of all the receipts on the alleged expenses but kept the budget sheet.

[182] It was contended that the prosecution did not challenge these witnesses on the amount spent for the two by-elections, and that they received cash totalling RM2,020,800 from the accused. It was submitted that the prosecution's failure to cross-examine on these crucial issues tantamount to an acceptance of their testimony; *Wong Swee Chin v. Public Prosecutor*[47]. I am of the view that the proposition set out by the apex court in that case, was a general rule, and that it is ultimately the court's task to carefully evaluate all the evidence and determine its weight. The Court of Appeal's judgment in *Khee Thuan Giap v. Public Prosecutor*[48] elucidates this point:

> The celebrated case of *Wong Swee Chin v. PP* (*supra*) made it clear that there is a general rule that failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of the witness's testimony. *That is about all, only a general rule. It follows through that a mere failure to cross-examine as such does not necessarily mean that it must be taken as being accepted. Equally, there are circumstances where failure to cross-examine does not necessarily mean that adverse inferences must be drawn as a matter of course. Rather the proper approach is that the court must necessarily undertake a careful evaluation of the totality of the evidence in order to determine the cogency and weight of such testimony.*
>
> We were thus in agreement with Yong Pung How CJ, sitting at the High Court in *Liza bte Ismail v. PP* [1997] 2 SLR 454, that:
>
> Although the general proposition is that testimony not subjected to contradiction in cross-examination may be treated as unchallenged and thus accepted by the opposing party, the court is still entitled to reject such testimony: *Paric v. John Holland Constructions Pty Ltd.* [1984] 2 NSWLR 505 per Samuels JA at p. 507; see also Hunt J's observation at in *Allied Pastoral Holdings*. A careful evaluation of the totality of the evidence must still be undertaken to determine the cogency and weight of such testimony.
>
> Hence, such failures to cross-examine should be tested against the probabilities of the case and a careful evaluation of the totality of the evidence adduced in court.[49] (emphasis added)

[183] Datuk Rizalman and Datuk Zakaria's over-enthusiasm in defending the accused while testifying, did not escape my attention. I do not find this astonishing. Datuk Rizalman was the Chief of UMNO's Bandar Tun Razak division, which is in the Federal Territories. He is a subordinate in party rank to the accused, who is the Chief of UMNO's Federal Territories division. Similarly, Datuk Zakaria too would be a subordinate to the accused, as the latter was UMNO's Secretary General. The preponderance of evidence juxtaposes their testimonies.

[184] Trial judges have an untrammelled right to observe and make a finding on the credibility of the witnesses. I am mindful that the evidence of the accused and the witnesses for the defence should not be immediately suspected or treated as untruthful, merely because it advances the accused's defence or self-serving. The conclusion can only be reasonably reached after their testimonies have been weighed against all the evidence adduced during the trial. The following passage from the judgment of Singapore's Court of Appeal in *Muhammad Nabill bin Mohd Fuad v. Public Prosecutor*[50] is most instructive:

> If the presumption of innocence means anything at all, it must mean that an accused person who testifies to exonerate himself may be telling the truth. The assessment of whether or not he is doing so must, in the final analysis, depend on the totality of the evidence. And it should not be overlooked that courts are entirely capable of assessing the credibility of the claims made by witnesses, that being among the most basic aspects of fact finding, which is a core judicial task.[51]

[185] That the amounts allegedly forwarded to Datuk Rizalman and Datuk Zakaria totalled slightly more than RM2,000,000 has also not escaped my observation. When the accused had allegedly forwarded his own cash to these two individuals, he had no notion of how much Tan Sri Chai was going to give. As I have stated earlier, it only became apparent that Tan Sri Chai was giving a cheque for RM2,000,000 on 16 June 2016. That the expenses allegedly incurred for the two by-elections totalled up to just over RM2,000,000 was just too convenient. It suggests that these budget sheets were tailored after the event. I am therefore disinclined to place any weight on these two budget sheets, and the testimonies of Datuk Rizalman and Datuk Zakaria for the reasons that I have elaborated.

[186] More crucially, the accused has not demonstrated at all the source of the cash that he had allegedly given to Datuk Rizalman and Datuk Zakaria. He claimed to have given them cash. He contended that he had asked Tan Sri Chai to pay to Tadmansori, as he had advanced his own money. If this was the case, he should then be able to show withdrawals from the Tadmansori bank account. There was none. The accused did not proffer any explanation. There was no evidence of the source for the cash that he had allegedly given to Datuk Rizalman and Datuk Zakaria. The cash given could have very well been from other sources. It is crucial to show that the cash that he had allegedly forked out first came from Tadmansori's bank account to justify his instructions to Tan Sri Chai to make the cheque payable to Tadmansori. In my judgment, the accused had pocketed the RM2,000,000 for himself.

Conclusion

[187] The accused maintained that he is a man of means. I accept the accused's contention that he did not intend to brag when declaring his worth, and that he merely wanted to assert that RM2,000,000 was not an amount that would entice him. RM2,000,000, in my view, is a substantial amount of money, even for a millionaire. It is fallacious to think that a wealthy person is incapable of committing wrong to make financial gains.

[188] It is incumbent on the court to evaluate all the evidence at the prosecution and defence stage on a maximum basis. The burden lies on the prosecution throughout the case. The accused merely needs to cast a reasonable doubt to exculpate himself. The Supreme Court of India judgment in *Inder Singh and Another v. The State (Delhi Administration)*[52] is instructive:

> Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many, guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and a guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the court asks for manufacture to make truth look true? No, we must be realistic.

[189] I had in giving a maximum evaluation of the evidence presented during the prosecution and defence stage, came to the following conclusion. I am unable to accept that the accused alone was entrusted to raise funds for the two by-elections, as these two constituencies were not in his domain as the Chairman of the Federal Territories UMNO/Barisan Nasional. He was furthermore not the treasurer as claimed. I am also disinclined to accept the testimonies of Datuk Rizalman and Datuk Zakaria, including the budget sheets presented. In my opinion, their testimonies were concocted after the event, in an attempt to buffer the accused's defence. There is no evidence to prove that the accused knew that he would be getting RM2,000,000 from Tan Sri Chai. It is undoubtedly apparent that the RM2,000,000 given by Tan Sri Chai remained in Tadmansori's account for the accused's benefit. There is no evidence to prove that the accused had withdrawn money from Tadmansori's account to pay for the expenses of the two by-elections, even if I were to accept that both Datuk Rizalman and Datuk Zakaria had received cash from the accused. That he allegedly advanced slightly more than RM2,000,000 for the by-elections were afterthoughts. It is therefore established that the accused used the Tadmansori as a facade to receive the fruits of his crime.

Decision

[190] Section 173(m)(i) CPC stipulates that the court shall at the conclusion of the trial consider all the evidence presented, and decide whether the prosecution has proven its case beyond reasonable doubt. I have conducted a maximum evaluation of all the evidence by the accused and prosecution at the end of the trial, and find that the prosecution has proven its case beyond reasonable doubt against the accused in respect of the charge under s. 165 PC. The accused has failed to raise any reasonable doubt on the prosecution's case. I therefore find the accused guilty and convict him on the charge against him.

Mitigation

[191] Learned counsel for the accused submitted four grounds for this court to consider, which I shall refer to in sequence.

(i) That the accused is a first offender.

The accused has never been convicted in a court of law for any offence. The cases of *PP v. Mark Koding*[53], *Haris Fathillah Mohamed Ibrahim lwn. PP & Satu Kes Lagi* [54] and *Mustapha Alias v. PP*[55] were cited. In these cases, the court took cognisance of the fact that the accused were first time offenders and had only imposed fines.

(ii) Accused has made significant contributions to the nation.

It was submitted that the accused had contributed to the nation during his various stints as a Deputy Minister, Minister and Member of Parliament for the constituency of Putrajaya. Learned counsel highlighted the accused's efforts for the affordable housing project, where it benefited the people of Federal Territories and brought profits to DBKL.

(iii) The accused stands to be disqualified from being a Member of Parliament.

The accused stands to be disqualified as a member of parliament for the constituency of Putrajaya, if he is sentenced to imprisonment for a term of not less than a year as set out under art. 48(1)(e) of the Federal Constitution. The case of *Lim Kit Siang v. PP*[56] was referred to, where the Federal Court upheld the fines imposed on the accused by High Court, and had in fact reduced the quantum of some of the fines. The case of *PP v. Mark Koding* (*supra*) was referred to again, where the accused, who was then a Member or Parliament, was put on a bond of good behaviour for two years.

Learned counsel also urged this court to take judicial notice of the fact that the current Perikatan Nasional Government only holds a slim majority in Parliament, and that his disqualification as a Member of Parliament would have serious ramifications on the Government of the day.

(iv) The accused is 70 years old and requires close medical treatment.

It was submitted that the court should take into serious consideration the fact that the accused is of an advanced age, and is suffering from some medical conditions, and that a prison sentence could lead to his condition deteriorating.

[192] In conclusion, learned counsel for the accused asks that a fine be imposed on the accused, and that the fine imposed not exceed RM2,000.

[193] The prosecution conversely urged this court to pass a custodial sentence, and impose a fine that commensurate with the amount involved in this case. It was submitted that the sentence should act as a deterrent to the accused and to the public. The prosecution also submitted that the good done by the accused in respect of the affordable housing project, led to the accused benefitting himself by obtaining RM2,000,000 from Tan Sri Chai, and that the ends does not justify the means.

[194] The prosecution urged this court to follow the trend of sentencing for an offence under s. 165 PC, and referred to the case of *Mohd Khir Toyo v. PP* (*supra*), where the accused was sentenced to a year's jail.

Sentencing

[195] The accused is not the first high ranking public servant and politician to be charged and convicted under s. 165 PC. There have been others. The aphorisms "The law is no respecter of persons" and "Everyone is equal before the law" comes to mind. I do not doubt that the accused has served the nation for many years, and that is a criterion that I have taken into consideration. I have also taken into consideration the numerous mitigating factors that learned counsel for the accused has ably submitted. I agree that the facts of each case must be distinguished, and that the court should not take a "one size fits all" approach.

[196] The foremost consideration however in deciding the appropriate sentence is the public interest. The sentence must reflect the gravity of the offence committed. It must also serve as a deterrent to not just the accused, but also others from committing a crime of this nature.

[197] In passing a sentence, the court will need to, among others, follow precedents. This is to ensure uniformity in sentencing and avoid disparity that will only serve to send the wrong message to the public. I have as such referred to past cases where the accused was convicted under s. 165 PC, with

the Federal Court's decision in the case of *Mohd Khir Toyo v. PP*[57] being foremost. The accused in that case was sentenced to a year's imprisonment and the subject property forfeited. Zulkefli Ahmad Makinuddin (CJM) delivering judgment for the apex court had this to say:

> As a public servant and chief executive of the State, the appellant took a valuable thing for a consideration which he knew was concerned with him as a public servant in his official position. One purpose of s. 165 of the Penal Code is to prevent that sort of corruption. Corruption in all manner and form cannot be condoned. A fine would not send that message. Neither would community service ...
>
> The instant offence, which is destructive of public confidence in the government, was not trivial in nature. Imprisonment was the right proper punishment.[58]

[198] The punishment prescribed under s. 165 PC is for imprisonment for up to two years or fine or both. I am inclined to follow precedents, which indicates that a jail sentence is an appropriate punishment. I am also of the view the accused should not be allowed to profit from the wrong that he had committed, which was the RM2,000,000 that I held he had taken for himself. The accused is sentenced to 12 months of imprisonment and a fine of RM2,000,000, and in default six months imprisonment. The prison sentence is to run from the date of judgment.

Endnotes:

1. Project Implementation and Maintenance Department.
2. Department of Economic Planning and Development Coordination.
3. "Contribution for the Kuala Kangsar and Sungai Besar by-elections".
4. UMNO Federal Territory Liaison Chairman.
5. [2005] 1 CLJ 85 (FC)
6. [1947] 1 All ER 371.
7. p. 372
8. [2006] 1 CLJ 457; [2005] 6 AMR 203 (FC).
9. [2007] 6 CLJ 702; [2007] 7 MLJ 699 (CA).
10. [2003] 1 CLJ 734 (CA)
11. p. 752
12. [1990] 2 CLJ 1020; [1990] 2 CLJ (Rep) 746; [1991] 1 MLJ 316 (HC).
13. [1992] 4 CLJ 2086; [1992] 1 CLJ (Rep) 285; [1992] 2 MLJ 561 (SC).
14. [2015] 8 CLJ 769 (FC) and [2013] 5 CLJ 323 (CA).
15. [2015] 8 CLJ 769 (FC) at p. 814.
16. [1998] 3 CLJ 769; [1998] 3 MLJ 14 (CA).

17. p. 788 (CLJ); p. 47 (MLJ).
18. p. 788 (CLJ); p. 47 (MLJ).
19. p. 788 (CLJ); p. 47 (MLJ).
20. [1961] 1 LNS 41; [1961] 1 MLJ 105b (HC).
21. p. 105 (MLJ)
22. [1981] 1 LNS 96; [1981] 2 MLJ 230.
23. pp. 232-233 (MLJ).
24. [2018] 6 CLJ 98 (HC).
25. Better known for its acronym "PUSPANITA".
26. [1976] 1 LNS 184; [1977] 1 MLJ 15 (HC).
27. p. 23 (MLJ).
28. [2013] 1 CLJ 177 (FC).
29. p. 188.
30. p. 818.
31. Paragraph 8 of his witness statement.
32. [2007] 4 CLJ 337; [2007] 5 MLJ 1 (FC).
33. [2014] 7 CLJ 392; [2014] 4 MLJ 282 (CA).
34. [2014] 6 CLJ 64 (CA).
35. [1963] 1 LNS 82; [1963] MLJ 263 (HC).
36. [1967] 1 LNS 179; [1967] 2 MLJ 19 (HC).
37. [2019] 8 CLJ 465; [2019] 6 MLJ 220 (FC).
38. [1991] 3 CLJ 2914; [1991] 3 CLJ (Rep) 557; [1992] 1 MLJ 360 (HC).
39. Central Bank of Malaysia.
40. [1991] 3 CLJ 2914; [1991] 3 CLJ (Rep) 557; [1992] 1 MLJ 360 (HC).
41. [1998] 2 All ER 673.
42. [2019] 4 CLJ 799 (HC).
43. p. 827.
44. [1977] 1 LNS 92; [1977] 1 MLJ 180 (HC).
45. p. 183 (MLJ)
46. [1999] 2 CLJ 215; [1999] 2 MLJ 1 (HC).
47. [1980] 1 LNS 138; [1981] 1 MLJ 212 (FC).
48. [2019] 1 LNS 568; [2019] 4 MLJ 651.
49. p. 661 (MLJ)
50. [2020] 1 SLR 984 (CA).
51. p. 1002.

52. AIR 1978 SC 1091.
53. [1982] 1 LNS 96; [1983] 1 MLJ 111 (HC).
54. [2018] 1 LNS 1054; [2019] 7 MLJ 14 (HC).
55. [2016] 1 LNS 1426 (HC).
56. [1979] 1 LNS 47; [1980] 1 MLJ 293 (FC).
57. [2015] 8 CLJ 769 (FC).
58. p. 837.

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